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No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1989

DON C. WILSON, et al.,
Petitioners,

VS.

GEORGE DEUKMEJIAN, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT

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QUESTION PRESENTED

Whether double-celled confinement of inmates at California's San Quentin Prison, though not per se unconstitutional, nevertheless violated the Eighth Amendment, as interpreted and applied in *Rhodes v. Chapman*, 452 U.S. 337 (1981), and was properly enjoined, in light of the demonstrated inhumane consequences of overcrowding and double-celling at San Quentin under the deplorable and sordid conditions that were found to exist there?

PARTIES TO THE PROCEEDING

The petitioners, plaintiffs in the California Superior Court (the trial court) and respondents in the California Court of Appeal, are Don C. Wilson, Richard Parento and Ursula Gealey, on their own behalfs, and as representatives of the class consisting of "all persons who have been confined on the mainline at San Quentin since June 16, 1981, or who may be confined there in the future."

The respondents, defendants in the trial court and appellants in the California Court of Appeal, are the Governor of the State of California, the Secretary of the California Youth and Adult Corrections Agency, the Director of the California Department of Corrections, and the Warden of the California State Prison at San Quentin.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT

Petitioners Don C. Wilson, Richard Parento and Ursula Gealey, by their counsel, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal of the State of California, First Appellate District, entered in this proceeding on December 12, 1988.

OPINIONS BELOW

The Declaratory Judgment and Permanent Injunction of the California Superior Court is attached hereto as Appendix "A".

The Statement of Decision supporting the judgment of the California Superior Court is attached hereto as Appendix "B".

The opinion of the California Court of Appeal, First Appellate District, Division 3, reversing the trial court judgment in significant respects, is attached hereto as Appendix "C".

The order by the California Court of Appeal denying rehearing in the case is attached hereto as Appendix "D".

The California Supreme Court's decision denying review is attached hereto as Appendix "E".

JURISDICTION

The judgment of the Court of Appeal was entered on December 12, 1988, and rehearing was denied on January 6, 1989. The California Supreme Court denied the petition for review on March 23, 1989.

This petition for certiorari is timely filed pursuant to 28 U.S.C. § 2102(c) and Supreme Court Practice Rule 28.2, within ninety days of March 23, 1989.

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Eighth and Fourteenth Amendments to the United States Constitution, which provide in relevant part as follows:

Amendment VIII

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Amendment XIV

> "... [N]or shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioners filed this lawsuit on June 16, 1981, the day after this Court's decision in *Rhodes v. Chapman*, 452 U.S. 337 (1981). In the complaint, petitioners, general population (or "mainline") inmates at the California State Prison at San Quentin, alleged

that the conditions of their confinement violated the Eighth Amendment's proscription of cruel and unusual punishment, as applied to the States through the Due Process Clause of the Fourteenth Amendment, as well as standards established by state constitutional and statutory law. They sought a declaration to that effect and an injunction forbidding their confinement under such conditions.[1]

This lawsuit was prompted by the disastrous consequences at San Quentin of twin policies which the California Department of Corrections ("CDC") adopted in the late 1970's. One of the policies was to congregate at San Quentin those prisoners considered the most dangerous, maladjusted and difficult to manage in the department.[2] The second policy, said to be necessitated by a dramatic increase in the inmate population statewide, was to overcrowd the prison by double-celling these men in cells that are six feet wide, eight feet deep and eight feet high.[3]

As a direct consequence of the decision to overcrowd California's perceived "worst" inmates in San Quentin's cramped cells, the rate of violent incidents at San Quentin increased dramatically from 1979 to 1982. While the mainline population increased by 46% during the period 1979-1982, treatments for assault-related injuries increased 519%. Treatments for self-inflicted

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[1] By the end of 1982 the class of petitioners, which had been certified by the trial court, numbered about 1950 mainline inmates.

[2] The CDC's appellation for these prisoners was "Level IV", on a scale of I through IV. 79% of these Level IV prisoners were serving sentences for violent crimes. Over one-third were serving life terms. Two thirds were under thirty years old; 42% were under 25.

The CDC also divided its institutions into four levels. San Quentin was one of two institutions denominated level IV primarily because of its walled perimeter and internal armed security capabilities.

[3] Subtracting space consumed by bunks, the sink and the toilet, each inmate was left with about 9 square feet, only a portion of which was actually usable. One inmate had to lie on his bunk in order to permit the other to move around. Inmates assigned to upper bunks could not sit up in bed without hitting their heads on the concrete ceiling. (Appendix B, pp. B-5, B-6, B-9.)

injuries had increased 369%. Reported assaults, suicides and weapons possession incidents had increased 193%. The Warden testified, and penology experts confirmed, that levels of unreported violence were also quite high, especially so in mainline units where inmates had more personal contact with one another.

By 1982, violence had escalated to the point where significant portions of the prison were on "lockdown" more than half the time. During lockdown, inmates are confined to their cells nearly 24 hours per day. (Appendix B, pp. B-9, B-10.)

On June 19, 1982, in spite of the recurring lockdowns, a riot involving some 150 inmates and resulting in scores of stabbing and gunshot wounds occurred on the Upper Yard, an outdoor space utilized by mainline inmates. Prison officials attributed this riot in part to overcrowding. The Warden imposed a lockdown that virtually shut the prison down for months.

Notwithstanding the lockdown, prison officials proceeded with their plans to expand double-celling of the mainline. Accordingly, on September 20, 1982, the Honorable Louis H. Burke, former Justice of the California Supreme Court sitting by designation as a Judge of the Superior Court, issued a preliminary injunction enjoining expansion of double-celling at San Quentin.

Prison officials kept much of the mainline at San Quentin locked down for most of the balance of 1982 and early 1983. The violence did not abate, however, so that a total lockdown of San Quentin's mainline again was imposed in late March 1983; the lockdown was still in effect when trial commenced on April 21, 1983. Though the prison remained locked down through the conclusion of trial in June 1983, "[d]uring the trial there were multiple acts of violence (including two murders) virtually weekly." (Appendix B, p. B-11.) From January through mid-May 1983, San Quentin's mainline suffered the murders of three prisoners, the stabbings of two correctional officers, the rape of a female counselor, and two mass altercations involving twenty or more inmates each, not to mention reports of numerous other fights, altercations, and incidents involving weapons.

At the six-week bench trial, the court conducted two tours of the prison. The prison's warden characterized San Quentin as a

"monstrosity" that "should not be standing and operating as a prison in California". The Statewide Director of the CDC opined that San Quentin was "not even fit for human habitation" and that overcrowded confinement of prisoners there was "inhumane".

The warden also admitted that overcrowding at San Quentin had led to an escalation of inmate violence. The prison psychiatrist found that the double-celling at San Quentin under the conditions that existed there had produced a "psychiatric bombshell." It produced a greatly increased number of psychiatric cases, contributing to actual psychotic decompensation in some cases, and forced his staff to practice "battlefield" psychiatry. Substantial expert and lay testimony corroborated these opinions of San Quentin's own chief staff, as did the figures. The court found that "[t]here was substantial and convincing evidence that overcrowding and close confinement cause unbearable stress on [the] inmates. . . ." (Appendix B, p. B-10.)

The court also found that "the weaker of the two inmates in each cell is frequently subjected to threats, harassment and physical abuse (including sexual attack)." (Appendix B, p. B-9.) A vulnerable young prisoner told the terrifying story of how he was repeatedly raped by his cellmate during a lockdown at San Quentin and became too fearful to report the crimes because of threats on his life, made at knifepoint by his cellmate, if he did.

In sum, the trial court agreed with the Director of the CDC that confinement at San Quentin was "inhumane" and, found that conditions there "amount to physical and emotional torture and endanger life," and declared that "[n]ot one of these results has any penological purpose." (Appendix B, p. B-10.) It found that the prisoners "live under daily threat of injury or death" and that the "violence at San Quentin is out of control." (Appendix B, p. B-11.) It concluded that the "escalation of violent incidents at San Quentin, including San Quentin's general population, is the result of many factors," but that one of two "highly significant causes [was] overcrowding (and the double-celling

generated thereby)...." (Appendix B, p. B-12.)[4] Finally, the trial court concluded that "[r]eduction of San Quentin's unconstitutional rate of violence cannot be accomplished without implementation of a program that includes, at the least, ... an elimination of overcrowding and double-celling...." (Appendix B, p. B-12.)

As to the physical conditions at the prison, the trial court found as follows:

> Certain facts are readily apparent and were not substantially disputed. San Quentin is one of California's oldest prisons, portions of which were constructed over 100 years ago. Inmates share cells of 48 square feet in area and 360 cubic feet of space. The cells lack adequate heat, proper lighting, sufficient ventilation, and hot water. The plumbing is badly deteriorated. The electrical system is in total violation of all relevant codes and has been aptly described as an "electrical nightmare." Fire hazards abound and the provision for fire safety is extremely inadequate. Food is prepared and served under unsanitary conditions by inadequately trained and improperly supervised food service workers, using outmoded and unsafe equipment. General sanitation ... remains deplorable. The physical plant deficiencies and inadequate sanitation practices at San Quentin expose the men confined there to constant, severe and unjustifiable threats to their health and safety. (Appendix B, p. B-2.)

The trial court found that the prison authorities had known of the unconstitutional conditions of confinement for years, but that they had done nothing to correct them:

> The evidence produced at trial with regard to the length of time the inhumane, unsanitary and dangerous conditions had

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[4] The other was the new classification system, which the CDC had instituted in part to relieve the prisoners of violence at other institutions. The CDC's own records indicated, however, that the strategy had failed. Rates of violent incidents increased in two of the three levels of institutions, in the third they had not decreased very much. (Appendix B, p. B-12.)

> existed, were likely to continue to exist and worsen, was overwhelming. Year after year, from at least 1977 through 1982, report after report from staff and state-retained consultants of the California Department of Corrections called attention to all of the serious plant deficiencies existing at San Quentin. In addition, the medical staff warned of the effect of double-celling on the health of the inmates. Virtually nothing has been done to correct these deficiencies and absolutely nothing has been done to relieve the pressure of overcrowding on the inmates.
>
> . . . Repeated requests have been made to alleviate the unsanitary, unhealthful, overcrowded, tense and dangerous conditions at San Quentin, and repeatedly these requests have been ignored. (Appendix B, pp. B-13, B-14.)

On this basis, and on the basis of the "extreme callousness toward the plaintiffs' constitutional rights" exhibited on the witness stand by the defendant Secretary of the California Youth and Adult Corrections Agency (after the governor, the seniormost official with responsibility for the state's prisons), the trial court found that the conditions were the product of "deliberate indifference":

> [I]t appears clearly, positively and unmistakably that defendants have been "deliberately indifferent," as that term has been defined by the federal courts, to the constitutional rights of plaintiffs in causing, permitting and allowing the conditions described herein to occur, persist and worsen. . . . The Court finds that these conditions at San Quentin are systemic and so grossly deficient that they are indeed the product of "deliberate indifference." (Appendix B, p. B-13.)[5]

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[5] The "deliberate indifference" standard was developed in individual prisoner actions, pursuant to 42 U.S.C. § 1983, for money damages. See *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Whitley v. Albers*, 475 U.S. 312 (1986). It was not applied in *Rhodes*, which, like the present case, was a class action challenge of conditions of confinement. Hence the trial court observed that it was not a necessary element of petitioner's proof. (Appendix B, p. B-13, B-20, B-21.) Nevertheless, the proof was there, and the trial court so found.

As a result, the trial court declared that a range of conditions of confinement at San Quentin, including double-celling, was cruel and unusual within the meaning of the Eighth Amendment, and banned confinement at San Quentin under such conditions. (Appendix A, p. A-2.)

The State did not appeal the trial court judgment as it related to the structural and operational deficiencies at the prison. Thus, on appeal "[t]he principal question [was] whether the court erred in prohibiting the confinement of two inmates in a single cell." (Appendix C, p. C-1.) The Court of Appeal found that it had and reversed the judgment in this respect. (Appendix C, p. C-20.)

The trial court explicitly recognized that "[t]he leading federal case in this area of the law is the recent case of *Rhodes v. Chapman*, 452 U.S. 337 (1981)" (Appendix B, p. B-3) and that, in *Rhodes* "in analyzing double-celling the Court considered virtually every aspect of inmate life and institutional design and operation" of the prison in question (Appendix B, p. B-18). The Court of Appeal, however, found that the trial court "appears to have held double-celling unconstitutional regardless of any other conditions of cell confinement." (Appendix C, p. C-10.) Conceding increased violence at the prison and acknowledging that the judgment could be supported if it was shown that double- celling had led to that increased violence, the Court of Appeal found that the "evidence . . . does not support the finding that double-celling itself was a cause of the increase." (Appendix C, p. C-11.) Repeating this Court's caution in *Rhodes* "that Eighth Amendment determinations should not be merely the subjective view of judges" (Appendix C, p. C-7), the Court of Appeal reversed the double-celling portion of the judgment. As set forth above, it denied rehearing on this point and the California Supreme Court denied review of the issue. (Appendices D and E.)

REASONS FOR GRANTING THE WRIT

I. The Decision Below Conflicts With *Rhodes v. Chapman*, 452 U.S. 337 (1981), The Controlling Law Of This Court

Rhodes v. Chapman, 452 U.S. 337 (1981), is this Court's sole decision in a comprehensive class-action challenge by convicted prisoners to the conditions of their confinement. As such, it is a seminal decision in Eighth Amendment jurisprudence. For lower courts and litigants it performs two essential functions. It provides a blueprint for constitutional analysis of conditions in the nation's overcrowded prisons. It also establishes a baseline standard, derived from an analysis of a prison which occupies one end of the spectrum of conditions in American penal institutions, by holding that confinement of two inmates in a cell designed for one does not, *per se*, violate the Eighth Amendment.

There is trouble at the other end of the spectrum. It is at that end where, after an exhaustive inquiry conducted in accordance with the blueprint established in *Rhodes*, the trial court found the conditions of confinement at California's notorious San Quentin Prison. The decision below by the Court of Appeal, which purported to rely on *Rhodes* but which misconstrued and then reversed the trial court's ringing condemnation of double-celling at San Quentin, effectively turns *Rhodes* on its head. For all practical purposes the Court of Appeal's decision means that double-celling is *per se constitutional*—no matter where it is practiced, no matter how inhumane its effects.

It is up to this Court to correct this manifestly erroneous result, and, eight years after *Rhodes*, to provide a sorely-needed Eighth Amendment standard that will guide the lower courts nationwide as they grapple with the constitutional consequences of the relentless population explosion in the state and federal prisons.

A. *Rhodes v. Chapman* Established That "Double-Celling" Of Inmates Would Be Unconstitutional Where The Double-Celling Combined With Other Conditions To Subject Inmates To Cruel And Unusual Punishment

In *Rhodes v. Chapman*, this Court resolved "[t]he question . . . whether the housing of two inmates in a single cell at the

Southern Ohio Correctional Facility is cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments." *Id.*, at p. 339. The Court there "consider[ed] . . . for the first time the limitation that the Eighth Amendment . . . imposes upon the conditions in which a State may confine those convicted of crimes." (*Id.*, at pp. 344-345.) Thus, *Rhodes* presented this Court with "an occasion to consider specifically the principles relevant to assessing claims that conditions of confinement violate the Eighth Amendment." *Id.*, at p. 345.

Rhodes concerned the Southern Ohio Correctional Facility ("SOCF") a prison described by that trial court "as unquestionably a top-flight, first-class facility." *Id.*, at 340. The cells were "[a]pproximately 63 square feet" and "dayrooms" were adjacent to them. *Ibid.* Further:

> The food was "adequate in every respect. . . ." The air ventilation system was adequate, the cells were substantially free of offensive odor, the temperature in the cellblocks was well controlled, and the noise in the cellblocks was not excessive. . . . [T]he number of acts of violence . . . had increased with the prison population, but only in proportion to the increase in population. Respondents failed to produce evidence establishing that double-celling itself caused greater violence.

Id., at pp. 342-343.

Accordingly, this Court ruled that "[i]n view of the District Court's findings of fact, its conclusion that double-celling at SOCF constitutes cruel and unusual punishment is insupportable." *Id.*, at 347. In concluding its opinion, the Court affirmed the role of the courts in protecting against conditions of confinement that inflict cruel and unusual punishment, observing that "conditions in a number of prisons, especially older ones, have justly been described as 'deplorable' and 'sordid' [Citations]." *Id.*, at p. 352.

The concurring opinion of Justice Brennan, joined in by Justices Blackmun and Stevens, reaffirmed "that today's decision should in no way be construed as a retreat from careful judicial scrutiny of prison conditions . . ." *Id.*, at 353. Noting that "[t]he

touchstone of the Eighth Amendment inquiry is 'the effect upon the imprisoned' " (*id.*, at p. 366), the concurrence explained that it was only because "[t]he findings of the District Court leave no doubt that the prisoners are adequately sheltered, fed, and protected, and that opportunities for education, work and rehabilitative assistance are available" and that "[v]irtually the only serious complaint" was double-celling that these Justices concurred in the judgment.[6] That concurring opinion concluded:

> The District Court in this case was unable to identify any actual signs that the double celling at the Southern Ohio Correctional Facility has seriously harmed the inmates there; indeed, the court's findings of fact suggest that crowding at the prison has not reached the point of causing serious injury.

Id., at p. 369. While *Rhodes* held that double-celling is not *per se* unconstitutional, it most certainly did *not* hold that double-celling is *per se* constitutional. Conditions at each prison, the context in which double-celling is practiced, must be considered.

B. Applying The Analysis Established In *Rhodes v. Chapman*, The Trial Court Properly Concluded That Double-Celling Of General Population Prisoners At San Quentin, Under The Conditions Shown To Exist There, Constituted Cruel And Unusual Punishment

The contrasts between the SOCF facility involved in *Rhodes* and San Quentin are stark indeed. Whereas SOCF, a new prison, was "unquestionably a top-flight, first class facility," 452 U.S. at 340, the century-old San Quentin was, in the words of senior officials of the CDC, a "monstrosity," "unfit for human habitation," an institution of "inhumane" conditions of confinement. Whereas at SOCF the food was "adequate in every respect," at San Quentin the food was, and for years had been, a threat to the health of the inmates who ate it. Whereas at SOCF the air

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[6] The concurring justices also noted that "[t]he overcrowding in the cells is mitigated considerably by the freedom of most prisoners to spend time away from their cells, especially in the dayroom." *Id.*, at 366, n. 14. Indeed, the prison implemented a plan limiting double-celling to those inmates free to move about the facility 15 hours a day. *Ibid.*

ventilation system was adequate, the cells were substantially free of offensive odor, the temperature was well controlled and the noise in the cellblocks was not excessive, in the San Quentin mainline cellblocks there was no ventilation, the odors were offensive, the temperature was uncontrolled, the noise was deafening, the plumbing was substandard, the electrical system was dangerous and jerry-rigged, the filth was pervasive, birds flew in the rafters, and rats ran on the floors. Whereas at SOCF, the 63-square-foot cells were located next to "dayrooms," and the inmates were out of their cells for most of the day, at San Quentin the 48-square-foot cells were located on stacked tiers, with no "dayrooms," and, due to incessant "lockdowns," the inmates were frequently locked in their cells almost around the clock. Whereas at SOCF the number of acts of violence had not increased out of proportion to the increase in population, at San Quentin acts of violence increased at rates several times the rate of population increase. What is more, the trial court specifically found that overpopulation and double-celling at San Quentin were principal causes of the dramatic increase in violence.

This was, frankly, not a close case. The weight of the evidence that distinguished San Quentin from SOCF, as analyzed in *Rhodes*, made the trial court's decision easier. It found: "The unconstitutionality of each of the various conditions of confinement at San Quentin discussed herein and addressed in the Declaratory Judgment and Permanent Injunction 'clearly, positively and unmistakably appears.' " (Appendix B, p. B-4.) The evidence was also damning, in that the unconstitutional conditions were found to be the product of the state's "deliberate indifference" to the Eighth Amendment rights of the petitioners.

The Constitution compelled the trial court to act in the face of the overwhelming evidence of equalor, violence and inhumanity at San Quentin. Mindful, however, that "broad discretionary authority is necessary because the administration of a prison is 'at best an extraordinarily difficult undertaking,' " *Hewitt v. Helms*, 459 U.S. 460, 467 (1983), quoting *Wolff v. McDonnell*, 418 U.S. 539, 566 (1974), the trial court chose a conservative, carefully-tailored remedy. It enjoined the defendants from confining the plaintiffs under the conditions declared to be unconstitutional, but

stayed that injunction upon satisfaction of certain conditions. Primary among these conditions was the state's development of a plan to correct the constitutional deficiencies. The trial court also required the defendants to refrain from double-celling mainline inmates during the pendency of the stay. (Appendix A, pp. A-3, A-5.) Nothing less was required.

C. The Decision Below, Which Reversed The Trial Court's Judgment Condemning Double-Celling At San Quentin Under The Conditions Then Existing There, Mis-Construed The Trial Court's Judgment And Statement Of Decision

The Court of Appeal decision below misconstrued the trial court's Judgment and Statement of Decision by inferring that the trial court had held that double-celling was unconstitutional regardless of other conditions of cell confinement (i.e., that it was "per se" unconstitutional). The Court of Appeal ruled: "Insofar as the trial court held that double-celling was per se unconstitutional, the court erred." (Appendix C, p. C-10.) And: "From the [trial] court's treatment of double-celling as a discrete category of conditions of confinement, it appears to have held double-celling unconstitutional regardless of any other conditions of cell confinement." (Appendix C, p. C-10).

In the Statement of Decision, the trial court made clear the basis of its conclusion that double-celled confinement on the mainline at San Quentin was inhumane. The trial court was persuaded that the continued confinement of men "under each condition and under the totality of conditions which prevail there is unconstitutional and must be remedied." (Appendix B, p. B-1.)

The court noted that, "in analyzing double-celling", the United States Supreme Court in *Rhodes* had "considered virtually every aspect of inmate life and institutional design and operation. . . ." (Appendix B, p. B-18). The trial court also noted the Ninth Circuit's cautionary statements in *Wright v. Rushen*, 642 F.2d 1129, 1133 (9th Cir. 1981), including the comment that courts "must consider the effect of each condition in the context of the prison environment, especially when the ill-effects of particular

conditions are exacerbated by other conditions." (Appendix B, p. B-19).

Far from employing a rule of "per se" unconstitutionality, the trial court here stated that the *Rhodes* opinion had set forth "by its factual presentation the standard by which the constitutionality of double-celling under the Eighth Amendment may be determined", noting that another judge had "aptly observed" that "'. . . each case must be judged on its own unique facts.'" (Appendix B, pp. B-19, B-20).

The "unique facts" which compelled the trial court's declaration here that double celled confinement on the mainline at San Quentin was unconstitutional are detailed in the Statement of Decision (Appendix B) and in the Declaratory Judgment and Permanent Injunction (Appendix A) and are summarized in the Statement of the Case, above. The facts overwhelmingly support the trial court's conclusions. They need not be restated here. We note only that the trial court properly weighed these unique facts against those described in *Rhodes v. Chapman* and the many other authorities which provide standards against which conditions at a particular prison under scrutiny must be measured.

The trial court then enjoined the defendants from continuing to confine men on the mainline "until each of the unconstitutional conditions of confinement described above is eliminated or corrected," but stayed the injunction so long as defendants remained in compliance with conditions "calculated to result in the expeditious elimination, amelioration and correction of each unconstitutional aspect of confinement on the mainline at San Quentin." (Appendix A, p. A-3.) Among the conditions of the stay of the injunction was a requirement that the defendants act immediately to reduce overcrowding by, among other things, eliminating double celling. (Appendix A, p. A-3.)

At any time since the injunction issued in 1983, however, defendants could have sought a modification of the stay provisions in light of subsequent changes at the prison or sought a confirmation from the trial court that subsequent changes had sufficiently altered the "specific facts" relevant to the double-celling on the

mainline at San Quentin such that double-celling would no longer violate the injunction.[7]

Defendants, however, did neither of these things. Rather, they asked the Court of Appeal to reverse the trial court's ruling on the double pretense that it had found double-celling to be "per se" unconstitutional and that the trial court had imposed a "blanket ban" on double-celling. The Court of Appeal's opinion, which accepted this double pretense as the truth, reached a transparently erroneous conclusion as a result.

II. State And Federal Courts Require Guidance From This Court In Their Efforts To Deal With The Consequences Of The Continuing Nationwide Explosion Of Prison Populations

In *Rhodes*, the Court "granted the petition for certiorari because of the importance of the question to prison administration." 452 U.S. at 344. The constitutionality of double-celling remains an urgent and pressing question not only to prison administrators, but to the individual prisoners affected by such confinement.

If anything, the magnitude of the issue has become more evident and insisting since *Rhodes*. In *Rhodes*, this Court noted that "[o]ut of 82 court orders in effect concerning conditions of confinement" in federal or state correctional facilities as of March 31, 1978, "26 involved the issue of overcrowding. [Citation.]" *Id.*, at p. 356 (Brennan, J., concurring.)

Since 1980, the number of inmates confined in state and federal prisons in the United States has nearly doubled. See, "Prisoners in 1988", Bureau of Justice Statistics (1989). Pressures on prison administrators to overcrowd prisons and prison cells, perhaps unconstitutionally, is greater now than ever. Indeed, litigation challenging over-crowded prisons and jails now pends in virtually every state in the union, placing on trial court judges the burden of responsibly balancing administrative pressures against constitutional rights.

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[7] Elsewhere in its opinion, the Court of Appeal recognized that "[i]f conditions have changed, defendants are entitled to apply to the trial court for a modification of the injunction." (Appendix C, p. C-19.)

This Court, by means of a thoughtful and well-articulated opinion in this case, can provide much needed guidance to the trial court judges in resolving claims of unconstitutional double-celling and overcrowding and in fashioning appropriate remedies where cruel and unusual conditions are found.

CONCLUSION

For all of the above reasons, the Court should grant the petition for certiorari.

DATED: June 21, 1989

Respectfully submitted,

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APPENDIX A

Superior Court of the State of California
for the County of Marin

No. 103454

Don C. Wilson; Richard Parento; and Ursula Gealey,
Plaintiffs,

vs.

George Deukmejian, Governor of the State of California;
N.A. Chaderjian, Secretary of the Youth and
Adult Corrections Agency of the State of California;
Daniel McCarthy, Acting Interim Director of the
California Department of Corrections; and
Reginald Pulley, Warden of San Quentin State Prison,
Defendants.

DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

[Filed Sept. 13, 1983]

This cause came on regularly for trial in Department No. 2, Courtroom No. 1, Marin County Civic Center, before the Honorable Beverly B. Savitt, Judge of the Superior Court. Trial began on April 21, 1983, and continued thereafter from day to day through June 1, 1983. Michael Satris, Luther Kent Orton, David D. Cooke and Kathleen Foster appeared as counsel for plaintiffs Don C. Wilson, Richard Parento, Ursula Gealey and the class of persons represented by plaintiffs Wilson and Parento, consisting of all persons who have been confined on the mainline at San Quentin since June 16, 1981, or who may be confined there in the future (the "Mainline Class"). James B. Cuneo appeared as counsel for defendants George Deukmejian, N.A. Chaderjian, Daniel McCarthy and Reginald Pulley. Oral and documentary evidence was presented and has been considered by the Court. Each party lodged a proposed form of judgment and proposed statement of decision which have been reviewed and considered by the Court. The cause was submitted on July 8, 1983.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT the men comprising the mainline population in the California State Prison at San Quentin since the filing of the Complaint herein on June 16, 1981, have been and are now confined there under conditions which violate Section 17 of Article 1 of the California Constitution, Sections 2600 and 2652 of the California Penal Code, and the Eighth and Fourteenth Amendments of the United States Constitution. The men comprising the mainline population at San Quentin Prison suffer cruel and unusual punishment and are denied due process of law in the following respects:

(i) The prison is overcrowded. The men are forced to remain confined for extended periods of time, two men to a single cell less than 48 square feet in floor space and 360 cubic feet of space, with little or no opportunity for meaningful activity. Most of the men confined there are dangerous; many are seriously maladjusted or have psychiatric problems. The cells have inadequate heat, improper light and insufficient ventilation. Almost no cells have hot water. The plumbing is badly deteriorated. The electrical system in the cell blocks is dangerously substandard, in total violation of all electrical codes. Noise levels are excessive. Lack of proper sanitation practices produces harborage for birds, mice, roaches, bacteria and vermin of all sorts. The threat of injury or death from fire is real and imminent. These conditions threaten the physical, mental and emotional health and well-being of the men confined on the mainline at San Quentin and are not penologically justified.

(ii) The men are forced to live amidst excessive violence; the threat of injury or death from violent assault is great and is punishment not included in the punishment to which each inmate is sentenced.

(iii) The men are forced to live in a prison in which the threat of an outbreak of food-borne, water-borne, or vector-borne disease is severe. Food is prepared and served under unsanitary conditions, by inadequately trained and improperly supervised food service workers, using outmoded and unsafe equipment. Lack of proper sanitation practices pro-

duces harborage for birds, mice, roaches, bacteria and verim of all sorts. Opportunities for contamination of the potable water supply proliferate. The sanitary conditions existing are below minimum acceptable standards of decency.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT the above-named defendants, and each of them, and their officers, agents, employees, representatives, and all persons acting in concert or participating with them, shall be and they hereby are enjoined and restrained from causing or permitting any person to be confined on the mainline at San Quentin unless and until each of the unconstitutional conditions of confinement described above is eliminated or corrected.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the foregoing order enjoining and restraining defendants from the continued confinement of men on the mainline at San Quentin shall be stayed, but only if and so long as defendants remain in compliance with each of the following conditions calculated to result in the expeditious elimination, amelioration and correction of each unconstitutional aspect of confinement on the mainline at San Quentin:

(i) Defendants shall act immediately to reduce overcrowding at San Quentin. In addition, within forty-five (45) days of the issuance of this order, defendants shall submit to the Court a plan to be implemented within ninety (90) days thereafter for the prompt elimination of overcrowding at San Quentin, which plan shall include the elimination of all involuntary double-celling at San Quentin and shall address the effect on the physical, mental and emotional well-being of members of the Mainline Class resulting from their confinement in institutions other than San Quentin.

(ii) Within forty-five (45) days of the issuance of this order, defendants shall submit to the Court a plan for the evaluation and re-examination of the departmental classification system by which San Quentin has been designated a Level IV institution. The evaluation and re-examination shall be submitted to the Court within ninety (90) days of the completion of the plan and shall address, *inter alia*:

(a) the modification of the classification system in light of the extent to which the system has contributed to the unprecedented and unacceptable levels of violence at Level IV institutions, in general, and at San Quentin, in particular;

(b) the designation of one or more Level III institutions as Level IV institutions to minimize overcrowding and eliminate involuntary double-celling of Level IV inmates;

(c) the modification of the classification system to prevent the commitment to Level IV institutions of men whose youth or other personal characteristics render confinement at a Level IV institution unsafe, inappropriate, or not necessary for the protection of the public and the proper functioning of the Department of Corrections.

(iii) Within forty-five (45) days of the issuance of this order, defendants shall submit to the Court a proposal for the development of a plan and schedule for the expeditious elimination of the structural and operational deficiencies at San Quentin which threaten the lives, health and safety of the inmates confined there and which are more fully described in the Statement of Decision herein. The plan and schedule to be developed shall be submitted to the Court within ninety (90) days after the completion of the proposal and shall address each of the following:

(a) The correction of physical plant, equipment and operational deficiencies in the food preparation and food service area which threaten health and safety;

(b) The correction or amelioration of conditions throughout the institution, especially in the cell-block areas, which create a risk of death or injury by fire or electrical shock;

(c) The provision of safe and sufficient heat, light, plumbing, electricity, ventilation and hot and cold running water to all mainline cells as well as the control of noise in the cell block areas; and

(d) The more effective control of birds, mice, roaches, bacteria and other vermin throughout the institution, espe-

cially in the food preparation, food service and cell block areas.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall review the adequacy of each plan or proposal submitted with the assistance of a Special Master to be appointed by the Court within thirty (30) days of the date hereof from the candidates to be nominated by the parties in writing within fifteen (15) days of the date hereof. Reasonable compensation for the Special Master shall be paid by defendants. The Special Master shall consult with the Court upon request and shall submit a written report each calendar quarter until further order of the Court concerning the adequacy of defendants' implementation of each plan or proposal. Plaintiffs' [*and defendants'*] counsel shall be provided with a copy of each plan, proposal and Special Master's report and will be afforded an opportunity to comment on them. The order enjoining and restraining defendants from continued confinement of men on the mainline at San Quentin shall be stayed only if and so long as the Court remains satisfied with the adequacy of defendants' plans and proposals and the implementation thereof.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs recover their costs of suit and disbursements herein in the amount of $, and their reasonable attorneys' fees according to proof to be submitted.

DATED: September 13, 1983.

/s/ BEVERLY B. SAVITT
Hon. Beverly B. Savitt
Judge of the Superior Court

APPENDIX B

Superior Court of the State of California
In and for the County of Marin

No. 103454

Don C. Wilson; Richard Parento; and Ursula Gealey,
Plaintiffs,

vs.

George Deukmejian, Governor of the State of California;
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Daniel McCarthy, Acting Interim Director of the
California Department of Corrections; and
Reginald Pulley, Warden of San Quentin State Prison,
Defendants.

STATEMENT OF DECISION

[Filed Sept. 13, 1983]

I. INTRODUCTION

This Statement of Decision is issued following a six-week trial addressing the constitutionality of the conditions of confinement of the mainline or general population inmates in the California State Prison at San Quentin. At the trial, the parties called dozens of witnesses and submitted hundreds of documentary exhibits. In addition, this Court inspected the facility on two separate occasions (once, on the last day of trial, without prior notice to Defendants or to the inmates).

This Court is persuaded that Defendants' continued confinement of men at San Quentin under each condition and under the totality of conditions which prevail there is unconstitutional and must be remedied. Confinement at San Quentin is cruel and unusual. The men imprisoned there live under conditions which fall well below basic standards of human decency. Double-celling in extremely small cells remains the rule on the mainline at San Quentin. Violence in the prison is at an unprecedented level and threatens to rage entirely out of control.

Certain facts are readily apparent and were not substantially disputed. San Quentin is one of California's oldest prisons, portions of which were constructed over 100 years ago. Inmates share cells of 48 square feet in area and 360 cubic feet of space. The cells lack adequate heat, proper lighting, sufficient ventilation, and hot water. The plumbing is badly deteriorated. The electrical system is in total violation of all relevant codes and has been aptly described as an "electrical nightmare." Fire hazards abound and the provision for fire safety is extremely inadequate. Food is prepared and served under unsanitary conditions by inadequately trained and improperly supervised food service workers, using outmoded and unsafe equipment. General sanitation, although improved in some respects since this suit was filed in June of 1981, remains deplorable. The physical plant deficiencies and inadequate sanitation practices at San Quentin expose the men confined there to constant, severe and unjustifiable threats to their health and safety.

San Quentin is one of two maximum security prisons designated custody Level IV institutions in which California confines its most violent offenders serving the longest terms. Since the implementations of a revised custody classification system in 1980, virtually all prisoners at San Quentin are Level IV custody inmates.

During recent years, as the result of a combination of factors including determinate sentencing laws, mandatory prison terms and longer sentences, the entire California prison system is vastly overcrowded at all levels. At the time of trial, the Department of Corrections was confining more than 32,000 inmates in a system with a designed capacity of less than 24,000. Despite an approved building program which will result in the construction of several new prisons over the next five years, the system is expected to continue to be overcrowded with the net system-wide population increasing by approximately 100 inmates per week. Evidence produced at trial indicated that the Department of Corrections had more than 5,800 Level IV inmates, whose numbers are increasing at a rate of approximately 1,000 per year, in Level IV cells designed for no more than 4,300.

There are, to date, no reported California opinions in cases challenging overall conditions of confinement in an institution of the Department of Corrections. The courts of the state have had little opportunity to consider and establish standards for evaluating conditions of prison confinement with respect to whether such conditions are cruel or unusual. (However, state standards are discussed for the first time, to this Court's knowledge, in a new decision filed July 12, 1983, by the Fourth District Court of Appeal, *In Re The Inmates of the Riverside County Jail at Indio v. Ben Clark, as Sheriff of Riverside County*, 4 Civ. 27464, 83 Daily Journal D.A.R. 2057. This opinion states:

> "The same basic test employed in the federal courts is appropriate to assessing conditions of confinement challenged under the California Constitution". (*Id.* at 2058)

The Court goes on to say that:

> ". . . in assessing the standards of decency which are essential to this analysis, we think it appropriate that California courts look chiefly to California standards and institutions for their guideposts." (*Id.*, at p. 2058)

Prior to the Indio opinion California decisions relating to conditions in penal institutions have been limited to a specific practice in a specific institution. However, there is an abundance of federal decisional authority concerning conditions of confinement in both state and federal prisons. Federal cases have dealt with the standards required under the Eighth Amendment to the United States Constitution which bars "cruel and unusual punishment." The leading federal case in this area of the law is the recent case of *Rhodes v. Chapman*, 452 U.S. 337 (1981).

California, however, has adopted Article 1, Section 17, of the state constitution which, unlike the Eighth Amendment, bans "cruel *or* unusual punishment." In construing this provision, this Court bears in mind the California Supreme Court's admonition in *Allen v. Superior Court*, 18 Cal.3d 520, 52 (1976), that our constitution is "a document of independent force." Our state Supreme Court has further determined that the use of the disjunctive between the terms "cruel" and "unusual" was purposeful. *People v. Anderson*, 6 Cal.3d 628 (1972).

This Court has relied heavily upon federal cases in an attempt rationally and meaningfully to evaluate the conditions of confinement at San Quentin Prison in terms of their constitutionality. This procedure was approved in the *Allen* decision cited above.

In its opinion in *Rhodes*, the United States Supreme Court summarized conditions which had been held to violate the Eight Amendment. These included unnecessary and wanton infliction of pain, punishment grossly disproportionate to the crime and inflictions of pain which are "totally without penological justification." Other federal cases have held that inmates are entitled to reasonably adequate food, clothing, shelter, sanitation, medical care, ventilation, hot and cold running water, light, heat, plumbing, and quarters which are reasonably fire-safe. Further, the federal courts have held that inmates must be given reasonable protection from constant threat of violence and sexual assault.

In California a punishment is "cruel or unusual," within the meaning of Article 1, Section 17, when it "shocks the conscience and offends fundamental notions of human dignity." *In re Lynch*, 8 Cal.3d 410 (1972). Further, the California courts have found, as the federal courts have, that the concept of cruel or unusual punishment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *People v. Vaughn*, 71 Cal.2d 406 (1969), citing *Trop v Dulles*, 356 U.S. 86 (1958).

Criminal defendants who challenge the constitutionality of the severity of their legislatively-mandated sentences must show that the unconstitutionality "clearly, positively and unmistakably appears." *People v. Wingo*, 14 Cal.3d 169, 174 (1975); *People v. Dennis M.*, 70 Cal.2d 444, 453 (1969). Plaintiffs were not required, under the circumstances and in the context of this civil case, to meet this burden of proof. Nevertheless, the unconstitutionality of each of the various conditions of confinement at San Quentin discussed herein and addressed in the Declaratory Judgment and Permanent Injunction "clearly, positively and unmistakably appears."

II. OBSERVATIONS OF COURT

This Court visited San Quentin on two occasions during the trial. On April 26, 1983, the Court toured the three cell blocks in which general population prisoners were housed at that time, the food preparation, service and storage areas, the hospital, the school, the exercise yards, and the shop areas. On the last day of trial, June 1, 1983, this Court again visited San Quentin, including the two cell blocks in which general population inmates were then housed as well as the dining and kitchen areas visited previously. On the April 26 visit, the Court's first impression upon entering each cell block was that there was an enormous din which was extremely deafening. It was easy to discern where all the noise came from. Almost every inmate had his own television set as well as his own radio. It was not unusual to see two television sets playing along with a radio at one time in a single cell. Each was being played loudly in an apparent attempt to drown out the noise from other nearby sets. The cell blocks are constructed of steel and concrete and reverberate the extreme noise levels generated by the many television sets and radios as well as the voices of staff and inmates.

While the temperature on the lower tiers could be quite comfortable, the temperature on the fourth and fifth tiers was extremely hot. There appeared to be no air circulation. (Most of the men were in their cells as the prison was in a lockdown). Even though the temperature outside and on the lower level was comfortable, the men in the upper levels generally wore only their underwear because of the discomfort from the heat.

In the cells in which there were two inmates, at least one inmate was in his bed. This Court entered several cells and noted that it was virtually impossible to have more than one person moving about in the approximate 18 inches of space between the bunkbed and the wall. Further, it was quite obvious that the men who were assigned to the upper beds had insufficient headroom to sit up in bed. (The beds are the only furniture in the cells permitted and, therefore, the only place a person can sit to read, to study or to write.) Most of the available space in the cells was filled with the inmates' personal property. Many of the cells had boxes stacked from floor to ceiling filled with books, magazines,

papers, clothing, radios and other personal property. Many had stools, lamps, fans and other articles of furniture which were termed "contraband" by the prison officials who accompanied the Court on this tour. There was no stool or ladder by which the man assigned to the top bunk could climb up to or down from his bunk. (Several of the inmate witnesses who later testified, testified that the men in the upper bunk had to use the toilet as a footstool to reach the bunk.)

The light in the cells was very dim, making it very difficult to read, write or study. Some of the cells had jury-rigged wiring to attach various electrical appliances. There were bare wires apparent in many places. There were electric fans with no guards over the blades. Many of the cell fronts were covered in full or in part by curtains, boxes, clothing and other materials hung there by the inmates in an apparent attempt to acquire privacy.

Many of the men were lying in their beds sleeping or staring into space, and they appeared to the Court to be depressed.

In East and West Block the shower stalls were at one end of each tier. In Alpine the showers were in the center of the tier. Only a few men could take a shower at the same time. One of the most common complaints from the inmates that the Court heard was that they were unable to take a shower frequently enough. Although the administration indicated that the men were permitted to take a shower every other day, they admitted that when the general population was in lockdown it was impossible to allow them to shower that often, for the reason that there was insufficient time to get the men to and from the showers in small groups. Several of the shower rooms were dark as the lights were broken. Some of the showers could not be used as one of the hot water boilers was not functioning.

The cell fronts are open, barred doors. The doors have two separate locking systems. One system is a bar which, when unlocked, can be removed in one stroke for a whole tier. The second locking system consists of individual locks on each cell door. To release a prisoner from a cell the bar must be removed and each cell door individually opened.

The utility alleyways (frequently referred to as "sally ports" or "plumbing chases") in all three of the cell blocks were viewed. A sally port is a narrow (three or four feet wide) alleyway running from one end to the other of each cell block from basement through the fifth tier. Each sally port contains heating and ventilating ducts, plumbing for the entire cell block, electrical wiring and television antenna wires. Each sally port was filthy, containing evidence of vermin and roaches; many had leaking pipes, bare wires; open fuse boxes and other electrical boxes frequently lacked covers.

There were birds flying overhead in the cell blocks.

In the dining area, food was served from open containers unprotected by sneezeguards. The inmates going through the line were permitted to serve themselves. There was no indication that the inmates were expected to come to the meal with clean hands. The plastic eating utensils were placed in such a way that an inmate was likely to touch a number of forks, knives and spoons as he was pulling his own out of the container.

In the main kitchen there was a single sink for washing hands for all of the kitchen workers. There was no running water at that sink that day. The floors were broken and uneven. The walls in the vegetable room were black with mold and gave off a foul odor. There were overhead sewage lines above the work surfaces where food was being prepared. There was standing water outside the freezer in the vegetable room and ice from leaking pipes on the floor of the freezer. The door to the exterior from the vegetable room had an inch or more of space between it and the floor, permitting access to mice, rats and other vermin. There was evidence of mice in this area.

In the main kitchen there was evidence of poor ventilation over the steam cookers, creating problems with condensation and dripping. There was a broken steam line over the tray washing area which was wrapped with rags but through which, nevertheless, steam was permitted to escape. The floors were extremely wet and slippery. Covers to the sewer lines were missing in many places. Water had backed up and was flooding the basement

under the main kitchen and was being pumped out through the kitchen.

In the bakery area there was a dead rat in a trap; there was evidence of mouse droppings both in the dry food-storage area and in the cooking room. The serving bins in the bakery were dirty. There was a bird in the bakery and there were insects in some of the corn flour. The mixing bowls had evidence of dried food material and one showed evidence of mouse droppings. There was a loose, filthy ventilation system filter hanging from the ceiling in the bakery area.

The shower room provided for the kitchen workers had no lights and was extremely dark.

The garbage containers both in the main kitchen and outside where most were stored had no lids. The wet garbage was dumped into large 55-gallon drums. Empty drums showed evidence of rotting food. Many of the drums appeared to be old, cracked, bent, and filthy, as was the broken concrete area around them.

At the Court's second visit, on June 1, the prison was still in lockdown. This lockdown was even tighter than on the visit six weeks earlier as there had been a new outbreak of violence shortly before the second visit. Most of the same conditions prevailed in the cell block areas as had existed on the first visit. There were even more inmates in their cells at this time. The inmates appeared to be more depressed and sullen. The heat and the lack of ventilation in the top tiers was more evident than on the first visit.

There was some improvement noticed in the food preparation areas. In particular, the empty garbage cans seemed to be free of rotting debris and the bakery seemed to be cleaner than on the Court's first visit. However, all of the rest of the conditions which existed on the first visit seemed to be present on the second tour. In addition, although the hot water was running in the main kitchen washbasin, the basin itself was filthy and there were no towels available. The vegetable slicer was dirty. The sink in the butcher shop was dirty and there were no towels available. There was steam escaping from the tray washer. The steam pipe which the Court noted was broken at her first visit was still broken,

wrapped in rags and leaking. There were mouse droppings observed in the bakery storage area. One of the large mixing bowls in the bakery was cracked and broken, but nevertheless still being used. The loose ventilation filter was still hanging from the ceiling. There were still no lights in the kitchen shower room.

III. THE CONDITIONS OF CONFINEMENT OF GENERAL POPULATION PRISONERS AT SAN QUENTIN AMOUNT TO CRUEL AND UNUSUAL PUNISHMENT.

The Court bases its decision concerning this matter on the following facts which were adduced at trial.

A. Double-celling.

1. Two men are confined to a single cell only 48 square feet in floor area and 360 cubic feet of space which contain a double bunkbed, a toilet, and a sink with shelves above the toilet and sink.

2. The bunk beds are approximately 30 inches wide. This leaves only 18 inches between the bed sides and the wall for two men to move about.

3. There is only 18 square feet of floor space free from furniture and fixtures.

4. The cells are filled with equipment, clothing, and other personal belongs which the inmates have obtained in an attempt to make their daily lives more comfortable. Two men who must share such a cell cannot move about the cell at the same time.

5. The inmate required to take the upper bunk is unable to sit up at any time as the distance between the top of the bunk and the ceiling is only two-and-a-half feet.

6. The weaker of the two inmates in each cell is frequently subjected to threats, harassment and physical abuse (including sexual attack). Fear of retaliation prevents the weaker inmate from complaining to the prison administration.

7. Men are confined in such cells for long periods of time. In 1982 inmates were in "lockdown" (in cells approximately 24

hours a day) for almost half of the year. Thus far in 1983, the general population has been in lockdown since March 27.

8. There is no dayroom area nor any place within the cell blocks for inmates to move about, to exercise or to obtain relief from the close confinement which double-celling compels.

9. Because length of sentence is primary in determining which level a person sentenced to state prison is placed, an increasing number of very young men who have never before been incarcerated have been committed to San Quentin under the new classification system. Many of these young men are physically and emotionally weak and are not able to cope with imprisonment with the more typical Level IV inmate housed at San Quentin. These men are subject to threats, harassment, intimidation, sexual abuse and physical abuse in much greater numbers than the general population as a whole. Further, these men have a higher rate of suicide than does the general population.

10. There was substantial and convincing evidence that overcrowding and close confinement cause unbearable stress on inmates who are frequently psychologically marginal or brittle. Such inmates are likely to decompensate and suffer mental or emotional breakdowns.

11. These conditions are inhumane. They amount to physical and emotional torture and endanger life. Not one of these results has any penological purpose.

B. Other Conditions of Cell Confinement:

1. The cells have inadequate heat and grossly insufficient ventilation. The temperature differences between lower tiers and upper tiers can be as great as 15 or 20 degrees.

2. There is no hot water in the cells.

3. There is insufficient light in each cell.

4. The plumbing is badly deteriorated.

5. The electrical system in the cell blocks is dangerous and in total violation of all electrical codes.

6. The noise levels are extremely high and excessive.

7. Poor sanitation throughout the cell blocks produces harborage for birds, mice, roaches, bacteria and other vermin.

8. The threat of injury or death from fire is real and imminent. The cell blocks are large; evacuation in the event of fire would take at least 25 minutes. In addition, most of the cells have jury-rigged and dangerous wiring.

These conditions threaten the physical, mental and emotional health of the men confined on the mainline at San Quentin, who are acknowledged to be the most dangerous in the prison system and seriously maladjusted before they enter the system.

The conditions which exist in the cell blocks do not meet the most minimum standard required for reasonably adequate shelter.

C. Violence.

1. San Quentin prison has the highest measured rate of violence in the California prison system. Violent incidents in the last three years have multiplied many times and are disproportionate to the rate of increase in the prison population.

2. State-wide statistics indicate that the 1982 rate of assaults for the prison system as a whole was 6.24 per 100 of prison population; for Level III prisons the rate was 6.00; for Folsom (the only other Level IV prison in California) 9.56; and for San Quentin, 15.44. In 1979 the rates were: statewide, 5.08; Level III, 7.04; Folsom, 4.35; and San Quentin, 5.27. During this three-year period the San Quentin rate almost tripled and the Folsom rate doubled, while the Level III rate decreased. The San Quentin rate is 61 percent greater than that at Folsom and two-and-one-half times greater than that at Level III institutions.

3. From January 1, 1983, until the start of the trial, April 24, assaults occurred on the mainline at San Quentin on 20 separate occasions, including one murder. During the trial there were multiple acts of violence (including two murders) virtually weekly. Although under 24-hour surveillance by correctional officers, the men in the San Quentin general population live under daily threat of injury or death. Violence at San Quentin is out of control.

4. This escalation of violent incidents at San Quentin, including San Quentin's general population, is the result of many factors. Two highly significant causes are overcrowding (and the double-celling generated thereby), and the classification system implemented in 1980, which operates to place at San Quentin and at Folsom State Prison those inmates who are perceived to be the most dangerous and volatile inmates in the custody of the Department of Corrections.

5. Implementation of this classification system has not resulted in a significant reduction in the rate of violent incidents occurring in Level III institutions, nor has it resulted in any reductions in the rate of violent incidents occurring in Level I and Level II institutions.

6. Reduction of San Quentin's unconstitutional rate of violence cannot be accomplished without implementation of a program that includes, at the least, both an elimination of overcrowding and double-celling, and at the same time, a serious reevaluation of the classification system that congregates the Department of Corrections' so called 'Level IV' inmates at two institutions, one of which is San Quentin. The classification system is not and cannot be justified by the rates of violence at 'Level I,' 'Level II,' or 'Level III' institutions in the Department of Corrections.

The legislature has decreed harder, longer sentences for those who have committed felonies; however, it did not order that part of each felon's punishment was to live in daily fear of life and limb. Exposure to these dangers has no appropriate penological function. The rate of violence is constitutionally impermissable.

D. Food Service.

1. Food is prepared and served under unsanitary conditions, by inadequately trained and improperly supervised food service workers, using outmoded and unsafe equipment.

2. The threat of an outbreak of food-borne, water-borne, or vector-borne disease is severe.

3. Opportunities for contamination of the potable water proliferate.

4. There is a lack of proper sanitation which produces harborage for birds, bacteria and other vermin.

The conditions existing in the food service area are a threat to the physical health of the inmates and fall below contemporary standards of decency.

IV. INJUNCTIVE RELIEF IS NECESSARY AND APPROPRIATE TO REMEDY THE UNCONSTITUTIONAL CONDITIONS OF CONFINEMENT.

The Court bases its decision concerning this matter on the fact that unconstitutional conditions have long existed at San Quentin and are likely to persist and even worsen in the absence of the judicial intervention specified in the Declaratory Judgment and Permanent Injunction.

The evidence produced at trial with regard to the length of time the inhumane, unsanitary and dangerous conditions had existed, were likely to continue to exist and worsen, was overwhelming. Year after year, from at least 1977 through 1982, report after report from staff and state-retained consultants of the California Department of Corrections called attention to all of the serious plant deficiencies existing at San Quentin. In addition, the medical staff warned of the effect of double-celling on the health of the inmates. Virtually nothing has been done to correct these deficiencies and absolutely nothing has been done to relieve the pressure of overcrowding on the inmates.

The Court rejects defendants' contention that the conditions addressed in this Statement of Decision and in the Declaratory Judgment and Permanent Injunction cannot be unconstitutional if they are not the product of the "deliberate indifference" of defendants or defendants' employees. See "Legal Basis for Court's Decision," ¶ 16, *infra*. However, it appears clearly, positively and unmistakably that defendants have been "deliberately indifferent," as that term has been defined by the federal courts, to the constitutional rights of plaintiffs in causing, permitting and allowing the conditions described herein to occur, persist and

worsen. Repeated requests have been made to alleviate the unsanitary, unhealthful, overcrowded, tense and dangerous conditions at San Quentin, and repeatedly these requests have been ignored. The Court finds that these conditions at San Quentin are systemic and so grossly deficient that they are indeed the product of "deliberate indifference."

The Court also bases its finding of defendants' deliberate indifference on the trial testimony of defendant N. A. Chaderjian, Secretary of the Youth and Adult Corrections Agency, who displayed extreme callousness toward the plaintiffs' constitutional rights.

V. ATTORNEY FEES.

An award of reasonable attorney fees and costs is appropriate in this case as it involves the vindication of the constitutional rights of the members of Plaintiff Class. The amount of such fees shall be determined at a hearing to be had after entry of judgment.

VI. LEGAL BASIS FOR COURT'S DECISION.

The legal basis for the Court's decision is as follows:

1. The Eighth Amendment to the Constitution of the United States provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

2. "No static 'test' can exist by which courts determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment 'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.'" *Rhodes v. Chapman,* 452 U.S. 337, 346 (1981), quoting *Trop v. Dulles,* 356 U.S. 86, 100 (1958) (plurality opinion). "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man." *Id.,* 356 U.S. at 100. As such, this Court is constitutionally bound to apply "broad and idealistic concepts of dignity, civilized standards, humanity and decency," *Estelle v. Gamble,* 429 U.S. 97, 102 (1976), in its evaluation of the conditions of confinement on the mainline at San Quentin.

3. The Supreme Court has stated:

> "Today the Eighth Amendment prohibits punishments which, although not physically barbarous, "involve the unnecessary and wanton infliction of pain," *Gregg v. Georgia*, 428 U.S. 153, 173 (1976), or are grossly disproportionate to the severity of the crime, *Coker v. Georgia*, 433 U.S. 584, 592 (1977) (plurality opinion); *Weems v. United States*, 217 U.S. 349 (1910). Among "unnecessary and wanton" inflictions of pain are those that are "totally without penological justification." *Gregg v. Georgia, supra*, at 183; *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).["] *Rhodes v. Chapman*, 452 U.S. at 346.

4. The Eighth Amendment prohibition of cruel and unusual punishments applies to the states through the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. *Robinson v. California*, 370 U.S. 660 (1962).

5. Article I, Section 17, of the California Constitution provides: "Cruel or unusual punishments may not be inflicted or excessive fines imposed."

6. A punishment is cruel or unusual within the meaning of Article I, § 17 when it " 'shocks the conscience and offends fundamental notions of human dignity.' " *In re Foss*, 10 Cal.3d 910, 919 (1974), quoting *In re Lynch*, 8 Cal.3d 410, 424 (1972). As with the Eighth Amendment, the concept of cruel or unusual punishments " 'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society,' " *People v. Vaughn*, 71 Cal.2d 406, 418 (1969), citing *Trop v. Dulles*, 36 U.S. 86, 101 (1958).

7. In *Allen v. Superior Court*, 18 Cal.3d 520, 525 (1976), the Court stated: "It is established that our Constitution is a 'document of independent force (citations) whose construction is left to this court, informed but untrammeled by the United States Supreme Court's reading of parallel federal provisions. . . ."

Furthermore, Cal. Const. Art. I, Section 24 provides in part:

> "Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution. . . . "

8. The use, by the drafters of the California Constitution, of the disjunctive between the terms "cruel" and "unusual," with knowledge of the federal formulation, was "purposeful." *People v. Anderson*, 6 Cal.3d 628, 634 (1972), *cert. denied*, 406 U.S. 958 (1972).

9. Calif. Pen. Code Section 2652 makes it a misdemeanor "to use in the prisons, any cruel, corporal, or unusual punishment or to inflict any treatment or allow any lack of care which would injure or impair the health of the prisoner, inmate, or person confined. . . ."

10. Calif. Pen. Code Section 2600 provides:

> "A person sentenced to imprisonment in a state prison may, during any such period of confinement, be deprived of such rights and only such rights, as is necessary in order to provide for the reasonable security of the institution in which he is confined and for the reasonable protection of the public."

11. An analysis of state standards under Article I, Section 17, of the California Constitution is found in a new opinion filed by Division Two of the Fourth Appellate District of the Court of Appeal.

> "The same basic test employed in the federal courts is appropriate to assessing conditions of confinement challenged under the California Constitution . . .
>
> ". . . in assessing the standards of decency which are essential to this analysis, we think it appropriate that California courts look chiefly to California standards and institutions for their guideposts. *In Re The Inmates of Riverside County at Indio v. Ben Clark, as Sheriff of Riverside County*. (July 12, 1983) 83 Daily Journal D.A.R. 2057, 2058.

Justice Morris (4th District Court of Appeals, Division 2), in her opinion in the *Indio* case carefully contrasted the conditions of confinement in the Indio jail to those which existed at the Southern Ohio Correctional Facility which are set out in *Rhodes*, supra, 452 U.S. 337 and the Metropolitan Correctional Center considered in *Bell v. Wolfish*, supra, 441 U.S. 520:

"In each of these cases the Supreme Court considered arguments that overcrowded conditions at detention facilities rose to the level of constitutional violations, and in each case the court held that "double-celling" or exceeding a facility's design capacity was not per se constitutionally prohibited. (Citation). In each case the court directed its attention to the particular conditions at the facility in question.

"The Metropolitan Correctional Center, at issue in Bell v. Wolfish, was constructed in 1975, and "differ(ed) markedly from the familiar image of a jail; there are no barred cells, dank, colorless corridors, or clanging steel gates. It was intended to include the most advanced and innovative features of modern design of detention facilities. As the Court of Appeals stated: '(I)t represented the architectural embodiment of the best and most progressive penological planning.' (Citation.)

"The Southern Ohio Correctional Facility, at issue in Rhodes v. Chapman, was built in the early 1970's; it was described as " 'unquestionably a top-flight, first-class facility.' " (452 U.S. at p. 341.) Both the Bell and Rhodes opinions stressed that under the conditions shown to exist at those facilities, no constitutional violation could be found. By clear implication, the court recognized that under other circumstances, overcrowding would be critical to a finding of unconstitutionality. (Citation.) Conditions of confinement "alone or in combination, may deprive inmates of the minimal civilized measure of life's necessities." (Citation.)"

"The Indio jail facility differs substantially from the "top-flight" and progressive facilities described in the two Supreme Court opinions. . . . the jail is a "very badly outmoded physical plant, in virtually all of the facilities," in the uncontradicted view of an expert from the Board of Corrections. Breakdown of plumbing was common; maintenance suffered. The problems of a badly designed, antiquated physical plant could only be exacerbated by relying on 31 individuals to do the work of 45 staff members." (*Id.* at p. 2058)."

In Indio the Riverside County Jail was only twenty-two (22) years old at the time of trial. In the present case the facility varies in age from approximately 50 years to approximately 100 years. No part of the facility has been built since 1950.

Under the circumstances set forth in this court's Statement of Decision, supra, this Court finds that the conditions of confinement at San Quentin fail to meet contemporary standards of decency, and are unconstitutional.

12. In *Rhodes v. Chapman, supra,* the Supreme Court was concerned with the issue of double-celling. However, in analyzing double-celling the Court considered virtually every aspect of inmate life and institutional design and operation in the Southern Ohio Correctional Facility (SOCF). The Court discussed its previous opinions in *Estelle v. Gamble,* 429 U.S. 97 (1976), involving inmate medical care, and in *Hutto v. Finney,* 437 U.S. 678 (1978), involving conditions of confinement in Arkansas' punitive isolation cells, and observed:

> "Conditions other than those in *Gamble* and *Hutto, alone or in combination,* may deprive inmates of the minimal civilized measure of life's necessities. Such conditions could be cruel and unusual . . ." 452 U.S. at 347 (emphasis supplied).

Most courts adopt Justice Brennan's assessment of the majority opinion in *Rhodes,* see 452 U.S. at 362-63 and n. 10 (Brennan, J. concurring in the judgment), and refer to the analysis as one respecting the "totality of conditions" of confinement. *Ruiz v. Estelle,* 679 F.2d 1115, 1139 (5th Cir. 1982) amended in part, vacated in part on other grounds, 688 F.2d 266 (5th Cir. 1982), *cert. denied,* ____ U.S. ____, 103 S.Ct. 1938 (1983). The "totality of conditions" approach adopted by the Supreme Court and by these lower federal courts is an appropriate analytical framework for this Court's consideration of the constitutionality of conditions on the mainline at San Quentin under both the state and federal constitutions.

One court eschews the label "totality of conditions," cautioning against vagueness in findings of cruel and unusual punishments and in creation of remedies for such constitutional violations; that court prescribes a focus on "discrete areas of human needs."

Hoptowit v. Ray, 682 F.2d 1237, 1246-47 (9th Cir. 1982); *see also, Wright v. Rushen*, 642 F.2d 1129 (9th Cir. 1981). That same court also recognizes that

> "... each condition of confinement does not exist in isolation; the court must consider the effect of each condition in the context of the prison environment, especially when the ill-effects of particular conditions are exacerbated by other related conditions. *Wright v. Rushen, supra*, 642 F.2d at 1133.

The Court's judgment in the present case reflects these cautionary statements by the Federal Ninth Circuit Court of Appeal.

13. Generally speaking, inmates are entitled under the Eighth Amendment to "reasonably adequate food, clothing, shelter, sanitation, medical care, and personal safety." *Newman v. Alabama*, 559 F.2d 283, 291 (5th Cir. 1977) remanded on other grounds *sub nom. Alabama v. Pugh*, 438 U.S. 781 (1978), *cert. denied*, 438 U.S. 915 (1978); *Wright v. Rushen*, 642 F.2d 1129, 1132-33 (9th Cir. 1981).

14. With respect to reasonably adequate shelter, *Rhodes v. Chapman, supra*, sets forth by its factual presentation the standard by which the constitutionality of double-celling under the Eighth Amendment may be determined. It does not confer a federal constitutional blessing on double-celling in all circumstances. The court declared that "conditions in a number of prisons, especially older ones, have justly been described as "deplorable" or "sordid." 452 U.S. at 352. The courts, including this Court, "have a responsibility to scrutinize claims of cruel and unusual confinement." *Id.* On this basis, it is appropriate to compare the conditions at the institution under scrutiny in *Rhodes v. Chapman* with conditions found in other prisons such as San Quentin.

One Federal District Court aptly observed:

> "As important as what the Supreme Court decided in *Rhodes* is what it did not decide. The Court did not rule that double celling may never amount to cruel and unusual punishment. Rather, the extensive analysis of related prison

conditions makes it crystal clear that each case must be judged on its own unique facts." *Grubbs v. Bradley*, 552 F.Supp. 1052, 1122 (M.D. Tenn. 1982).

Accordingly, since *Rhodes*, several courts, including the *Grubbs* court have determined that double-celling may violate or in fact does violate the Eighth Amendment. *Madyun v. Thompson*, 657 F.2d 868 (7th Cir. 1981); *Hendrix v. Faulkner*, 525 F.Supp. 435 (M.D. Ind. 1981); *French v. Owens*, 538 F.Supp. 910 (S.D. Ind. 1982); *Grubbs v. Bradley*, 552 F.Supp 1052 (M.D. Tenn. 1982); see also, *Toussaint v. Rushen*, #C-73-1422 SAW (N.D. Cal.) (preliminary injunction issued Jan. 14, 1983, enjoining, *inter alia*, double-celling in the restricted housing units at San Quentin).

15. "Sanitation is a discrete core area entitled to independent Eighth Amendment protection." *Grubbs v. Bradley*, *supra*, at 1127. Inmates are entitled to "reasonably adequate ventilation, sanitation, bedding, hygenic materials and utilities (i.e., hot and cold water, light, heat, plumbing)," *Ramos v. Lamm*, 639 F.2d 559, 568 (10th Cir. 1980). Their quarters must be reasonably fire-safe. *Leeds v. Watson*, 630 F.2d 674, 675-76 (9th Cir. 1980); *Ruiz v. Estelle*, 503 F.Supp. 1265, 1383 (S.D. Tex. 1980) aff'd in part, rev'd in part and remanded, 679 F.2d 1115 (5th Cir. 1982) amended in part, vacated in part, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, ____ U.S. ____, 103 S.Ct. 1438 (1983).

16. "[D]eliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' . . . proscribed by the Eighth Amendment." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Mental health care falls within the ambit of serious medical needs. See, e.g., *Woodall v. Foti*, 648 F.2d 268, 272 (5th Cir. 1981), and *Bowring v. Godwin*, 551 F.2d 44 (4th Cir. 1977).

This Court rejects defendant's contentions that it must find that defendants have been "deliberately indifferent" with respect to conditions of confinement at San Quentin before it can properly declare such conditions unconstitutional and fashion an appropriate remedy therefor. However, as stated elsewhere in this Statement of Decision, the evidence showed that defendants have

indeed been "deliberately indifferent," both literally and as that tional rights delineated herein.

17. Inmates must be given reasonable "protect[ion] from the constant threat of violence . . . and sexual assault." *Jones v. Diamond*, 636 F.2d 1364 (5th Cir. 1981), *cert. dismissed sub nom. Ledbetter v. Jones*, 453 U.S. 950 (1981); *see also, Ramos v. Lamm, supra*, 639 F.2d at 572. " . . . [C]onfinement in a prison where violence and terror reign is actionable. A prisoner has a right, secured by the Eighth and Fourteenth Amendments, to be reasonably protected from the constant threat of violence and sexual assault by his fellow inmates, and he need not wait until he is actually assaulted to obtain relief." *Woodhous v. Virginia*, 487 F.2d 889, 890 (4th Cir. 1973), citing *Holt v. Sarver*, 442 F.2d 304, 308 (8th Cir. 1971). Furthermore, "[a] pervasive risk of harm . . . may be established by much less than proof of a reign of violence and terror in the particular institution." *Doe v. District of Columbia*, 701 F.2d 948, 961 (D.C. Cir. 1983).

"When a state confines a person by reason of conviction of a crime, the state must assume the obligation for the safekeeping of that prisoner. The means of protecting inmates from each other is the provision of adequate physical facilities. Long-range plans provide no satisfactory solution to those who are assaulted or physically harmed today." *Finney v. Arkansas Board of Corrections*, 505 F.2d 194, 201 (8th Cir. 1974), *on remand, Finney v. Hutto*, 410 F.Supp. 251 (N.D. Ark. 1976), aff'd 548 F.2d 470 (8th Cir. 1977), aff'd 437 U.S. 678 (1978), reh. denied, 439 U.S. 1122 (1979).

18. " . . . [W]hen prison officials have failed to control or separate prisoners who endanger the physical safety of other prisoners, and the level of violence becomes so high as to constitute cruel and unusual punishment under the Eighth Amendment, federal courts have broad authority to eradicate such conditions and may order the development of a classification system as part of the remedy. [Citation]." *Jones v. Diamond*, 549 F.2d 997, 1015 (5th Cir. 1979), on reh., 636 F.2d 1364, 1376 (5th Cir. 1981) (same principal applied), *cert. dismissed sub nom. Ledbetter v. Jones*, 453 U.S. 950 (1981).

"The classification system is a matter ordinarily left to the expertise and discretion of prison administrators. [Citations omitted]. Nevertheless, if the proof shows a sufficient connection between an improper classification system and a protected constitutional right, such as the right to be free from excessive violence, there may be just cause for court intervention in the proper case." *Grubbs v. Bradley*, 552 F.Supp. 1052, 1124 (M.D. Tenn. 1982).

19. ". . . [W]hile an inmate does not have a federal constitutional right to rehabilitation, he is entitled to be confined in an environment which does not result in his degeneration or which threatens his mental and physical well-being." *Battle v. Anderson*, 564 F.2d 388, 403 (10th Cir. 1977).

20. An Eighth Amendment violation is proved when "the cumulative impact of the conditions of incarceration threatens the physical, mental and emotional health and well-being of the inmates and/or creates a probability of recidivism and future incarceration." *Laaman v. Helgemoe*, 437 F.Supp. 269, 323 (N.D.H. 1977), quoted in *Rhodes v. Chapman, supra*, at 364 (Brennan, J., concurring in the judgment).

21. ". . . [J]udicial intervention is *indispensable* if constitutional dictates—not to mention considerations of basic humanity—are to be observed in the prisons." *Rhodes v. Chapman, supra* at 354 (Brennan, J., concurring in the judgment) (emphasis in the original). ". . . [C]ontrol of jails and prisons is best left to the experts who are charged with the responsibility of running them, except when the conditions do not comport with concepts of human dignity of constitutional principles." *Inmates of Sybil Brand Institute for Women v. County of Los Angeles*, 130 Cal.App.3d 89, 101 (1982). ". . . [W]hen a prison has been found to be operated in plain violation of law, the court has the power, and it is its duty, to order appropriate remedial action." *French v. Owens, supra*, at 926. When conditions of confinement amount to cruel and unusual punishment, "federal courts will discharge their duty to protect constitutional rights." *Rhodes v. Chapman, supra*, at 352. This Court will do no less.

22. The courts in this state are vested with wide discretion in formulating equitable remedies to cure constitutional violations.

Hutto v. Finney, 437 U.S. 678, 687 n.9 (1978); *Molar v. Gates*, 98 Cal.App.3d 1, 25 (1979); *Blair v. Pitchess*, 5 Cal.3d 258 (1971); *Central Valley Chapter of the Seventh Step Foundation, Inc. v. Younger*, 95 Cal.App.3d 212 (1979).

23. The Court need not find that defendants have acted maliciously or in bad faith before it can declare conditions at San Quentin unconstitutional or fashion its remedy. See, *Rhodes v. Chapman, supra*, at 358 (Brennan, J., concurring in the judgment). Furthermore, Defendants' statutory duty to incarcerate prisoners legally committed to them does not shield them from injunctive relief to cure unconstitutional conditions of confinement. See, e.g., *Startrack, Inc. v. County of Los Angeles*, 65 Cal.App.3d 451, 457 (1976); *Merandette v. City and County of San Francisco*, 88 Cal.App.3d 105, 110-111 (1979). "Legislative mandate cannot take precedence over constitutional provisions." *Molar v. Gates, supra*, 98 Cal.App.3d at 24.

24. The Court recognizes and does not dispute the prerogative of the California legislature in the first instance to define conduct as criminal, to establish criminal penalties, or to appropriate funds to the various agencies of the Executive Branch as it sees fit or proper. However, the prerogatives of the Legislative Branch are circumscribed and limited by both the Federal Bill of Rights and the California Constitution. *Methodist Hospital of Sacramento v. Saylor*, 5 Cal.3d 685 (1971); *Way v. Superior Court*, 74 Cal.App.3d 165 (1977). It is this Court's duty to enforce these constitutional limitations whenever the exercise of legislative prerogative results in a deprivation of constitutional rights.

25. While reduction of population and elimination of double-celling as a remedy for overcrowding at penal institutions may well cause logistical difficulties for prison officials in the operation of prison systems, it is nevertheless a remedy that may be ordered in an appropriate case. *Battle v. Anderson*, 564 F.2d 388, 403 (10th Cir. 1977). Furthermore, while remedies ordered by a court may be costly to accomplish,

> Constitutional rights are not. . .confined to those available at moderate cost. . .[T]he nature of the safeguards imposed by the Bill of Rights and the Fourteenth Amendment levy costs

impossible for an accountant to calculate, but esteemed by us because they are literally priceless. *Ruiz v. Estelle*, 679 F.2d 1115, 1146 (5th Cir. 1982).

26. "[T]he reduction of population at one institution must not be accomplished in such a way that another facility becomes unconstitutionally overcrowded." *Grubbs v. Bradley, supra*, 552 F.Supp. at 1131.

27. The Court may appoint a Special Master to oversee enforcement of its judgment. The powers of the Special Master are to be dictated and delegated by the Court, and authority for his or her appointment may be derived from C.C.P. § 564, pertaining to receivers: "In Superior Court a receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases:. . . 3. After judgment, to carry the judgment into effect. . . [and] 8. Where receivers have heretofore been appointed by the usage of courts of equity." Special Masters, who are sometimes designated as "receivers," have been appointed to enforce equitable decrees in prison condition cases. *Ruiz v. Estelle*, 679 F.2d 1115, 1161 (5th Cir. 1982).

28. C.C.P. § 1021.5. The "private attorney general theory. . . "seeks to encourage suits effectuating a strong congressional or national policy by awarding substantial attorneys' fees, regardless of defendants' conduct, to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens.' " *Serrano v. Priest*, 20 Cal.3d 25, 43 (1977), quoting *D'Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 27 (1974). This case, involving vindication of the constitutional rights of members of the plaintiff class, is an appropriate case for an award of reasonable attorneys' fees to Plaintiffs. See, e.g., *Inmates of Sybil Brand Institute for Women v. County of Los Angeles*, 130 Cal.App.3d at 112-114 (reasonable fee award in case involving several conditions of confinement in women's county jail facility housing pretrial detainees and sentenced prisoners).

29. Actions pursuant to 42 U.S.C. § 1983 may be brought in California State Courts. *Brown v. Pitchess*, 13 Cal.3d 518 (1975). 42 U.S.C. § 1988 provides in part: "In any action or proceeding to enforce a provision of Section [ ] . . . 1983 . . . of this title . . . , the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." This provision is a federal parallel to C.C.P. § 1021.5, and under § 1988 reasonable attorney's fees to prevailing plaintiffs in prison conditions litigation have been made in many cases, including the following: *Ruiz v. Estelle*, 553 F.Supp. 567 (S.D. Tex. 1982); *Stewart v. Rhodes*, 656 F.2d 1216 (6th Cir. 1981), *cert. denied*, 455 U.S. 991 (1982).

DATED: September 13, 1983.

/s/ BEVERLY BLOCH SAVITT
Beverly Bloch Savitt
Judge of the Superior Court

APPENDIX C

In the Court of Appeal of the State of California
First Appellate District, Division Three

A026277

(Super. Ct. No. 103454 Marin County)

Don C. Wilson et al.,
Plaintiffs and Respondents,

v.

GEORGE DEUKMEJIAN et al.,
Defendants and Appellants.

[Filed December 12, 1988]

These consolidated appeals are from a judgment and orders declaring conditions of confinement of the general inmate population at the California State Prison at San Quentin (San Quentin) unconstitutional and mandating significant changes in its operation. The trial court found severe structural and operational deficiencies at the prison which threatened the lives, health, and safety of its inmates. We agree with the trial court's assessment of those deficiencies, which are not now at issue in this appeal; fortunately, most have been or are now being corrected. The principal question in this appeal is whether the court erred in prohibiting the confinement of two inmates in a single cell. As we will discuss, we have concluded that the blanket ban on double celling cannot be sustained.

PROCEDURAL HISTORY

In 1981, two San Quentin prisoners filed a class action alleging that conditions of confinement at the prison were unconstitutional. The complaint, which sought declaratory and injunctive relief, was filed on behalf of the "mainline" or general population of the prison.[1] Defendants were the warden of the prison, the

[1] More specifically, the class consisted of all persons confined at San Quentin as of June 16, 1981, or who may be so confined in the future, except for persons confined in restricted housing units. Conditions of

director of the California Department of Corrections, the Governor and others.[2]

On September 13, 1983, after a lengthy trial, the trial court issued a declaratory judgment and permanent injunction in which it concluded that the prisoners in the mainline population were being subjected to cruel and unusual punishment in several respects. The judgment stated: "(i) The prison is overcrowded. The men are forced to remain confined for extended periods of time, two men to a single cell less than 48 square feet in floor space and 360 cubic feet of space, with little or no opportunity for meaningful activity. Most . . . confined there are dangerous; many are seriously maladjusted or have psychiatric problems. The cells have inadequate heat, improper light and insufficient ventilation. Almost no cells have hot water. The plumbing is badly deteriorated. The electrical system in the cell blocks is dangerously substandard, in total violation of all electrical codes. Noise levels are excessive. Lack of proper sanitation practices produces harborage for birds, mice, roaches, bacteria and vermin of all sorts. The threat of injury or death from fire is real and imminent. These conditions threaten the physical, mental and emotional health and well-being of the men confined on the mainline . . . and are not penologically justified.

"(ii) The men are forced to live amidst excessive violence; the threat of injury or death from violent assault is great and is punishment not included in the punishment to which each inmate is sentenced.

"(iii) The men are forced to live in a prison in which the threat of an outbreak of food-borne, water-borne, or vector-borne dis-

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confinement of prisoners in administrative segregation at San Quentin are the subject of litigation in federal court. (See *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080; *Rowland v. U.S. Dist. Court for N.D. of Cal.* (9th Cir. 1988) 849 F.2d 380.)

[2] The action was also filed as a taxpayer's action by plaintiff Ursula Gealey, who alleged that the expenditure of funds to imprison persons at San Quentin under existing conditions is a waste of public funds and a threat to the physical security and general welfare of all Californians.

ease is severe. Food is prepared and served under unsanitary conditions, by inadequately trained and improperly supervised food service workers, using outmoded and unsafe equipment. Lack of proper sanitation practices produces harborage for birds, mice, roaches, bacteria and vermin of all sorts. Opportunities for contamination of the portable water supply proliferate. The sanitary conditions existing are below minimum acceptable standards of decency."

The court enjoined defendants from confining anyone at San Quentin until each unconstitutional condition was eliminated or corrected, but stayed the injunction provided defendants complied to the court's satisfaction with several enumerated conditions. First, defendants were to submit a plan for the elimination of overcrowding; that plan had to provide for elimination of all involuntary double celling and "address the effect on the physical, mental and emotional well-being" of members of the class from their confinement in institutions other than San Quentin. Second, defendants were to submit a plan for the "evaluation and reexamination" of the classification system which designated San Quentin a prison for the placement of the most violent prisoners. Finally, defendants were to submit a proposal for the elimination of the numerous structural and operational deficiencies specified in the court's statement of decision. The judgment provided for appointment of a Special Master to assist the court in reviewing the adequacy of the plans. Defendants commenced compliance with the court's conditions, but also filed a notice of appeal from the judgment.

In October 1983, defendants submitted its Phase I Report, a preliminary proposal to implement the injunction, which included a request for limited double celling. On January 19, 1984, after reviewing defendants' report and that of the Special Master, the court issued an order stating that it was impressed with the progress the defendants had already made toward correcting structural and operational deficiencies at the prison which threatened the lives, health, and safety of the inmates. The order also specified in some detail what the final plan should include, required a study of the classification system, directed the monitoring of all inmates transferred from the mainline to other institu-

tions, and refused to allow any involuntary double celling absent a riot or other similar emergency. Defendants also appealed from that order.

In March 1984, this court granted in part defendants' petition for writ of supersedeas by partially staying the double celling prohibition. In April 1984, defendants submitted a final plan to implement the court's findings, the Phase II Report. On August 30, 1984, the trial court approved the operations and structures section of the plan, but ordered that double celling, whether voluntary or involuntary, should not exceed the limit established by this court's stay. On September 24, 1984, the trial court issued a second order, approving the final plan only provisionally. As will be discussed in more detail later in this opinion, the order directed defendants to report further on their efforts to alleviate overcrowding by means other than transferring prisoners; it also ordered defendants to carry out a "total analysis" of the existing system for classifying inmates and prisons. Defendants filed a third notice of appeal from these two orders.

Finally, on June 19, 1985, the trial court issued an order enjoining defendants from involuntarily transferring any class member to either the North or Central facilities of the Correctional Training Facility at Soledad. Defendants filed a fourth notice of appeal from that order.

The several appeals have all been consolidated in this court.

FACTS

In recent years the prison population in California has increased dramatically. In 1983 the design capacity of the institutions in the statewide prison system was 23,557, but the inmate population was over 32,000 and was increasing by approximately 340 prisoners per month. Between 1977 and mid-1982, the number of inmates at San Quentin grew from 2,000 to 3,400. By February 1983, the general population was 153 percent of design capacity.

At the time of trial, California prisons were divided into four categories, ranging from the least (Level I) to the most secure

(Level IV). The only two level IV prisons were Folsom and San Quentin. In the late 1970's a new system for classifying prisoners was adopted, which was intended to insure that prisoners were placed in an institution with an appropriate level of custody, and to house similar prisoners in the same institution. Prison administrators hoped that housing disruptive and assaultive prisoners in one institution would free other institutions to provide programs for less disruptive individuals. Their attempt was to provide a more objective way of classifying prisoners than had been utilized previously. Prisoners were classified as Level I, II, III, or IV inmates, with the latter considered the most difficult management problems within the system. Criteria utilized to classify prisoners included length of term, nature of the crime committed, and prior escapes or assaultive behavior. A prisoner might qualify for Level IV custody solely on the basis of sentence length, and could be confined at San Quentin with no previous convictions. Reclassification of a prisoner based on in-prison behavior was possible. Among the results of the classification system was that the most violent offenders were concentrated at San Quentin. At the time of trial, there were more Level IV inmates in the system than Level IV cells available at Folsom and San Quentin; thus some Level IV inmates were confined at Level III institutions.

The general or mainline population at San Quentin consists of inmates who are ordinarily free to go from their cells to work, school, and to the mess hall.[3] At times, however, inmates in the mainline population are "locked down," or confined in their cells for up to 23 hours each day, and are released only to take showers and occasionally for meals. Among circumstances triggering a lock-down are violent incidents, when prison officials need to investigate and control inmates.

When the prison was not locked down, about 75 percent of the mainline population inmates were out of their cells about 14 hours a day; the rest, about 10 or 11 hours a day. Lock-downs were frequent, however.

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[3] Other inmates are in secured housing units for various reasons. Those units are also referred to as housing management control units or lock-ups.

The overcrowding at the prison led the the double celling of many mainline inmates. Prison officials testified that attempts were made to double cell individuals who were "somewhat compatible." Procedures were available to allow cell changes by an inmate having difficulty with a cellmate or with medical reasons for a change. The unit staff handled initial requests for changes, with the inmate appeal process available to an unsatisfied prisoner. Nevertheless, accomplishing a change often took a long time.

The conflicting evidence about the level of violence at the prison and its causes will be discussed later in this opinion. It is unnecessary for purposes of this appeal to set forth the evidence about the deplorable structural and operational conditions at the prison, as defendants do not challenge the trial court's findings and conclusions concerning those conditions.

CRUEL AND UNUSUAL PUNISHMENT: THE STANDARD OF REVIEW

In considering these appeals, we must accept the trial court's findings of fact, provided they are supported by substantial evidence. The constitutional significance of the facts found, however, is a question of law for the independent judgment of this court. (See *People v. Louis* (1986) 42 Cal.3d 969, 984-985; *People v. Leyba* (1981) 29 Cal.3d 591, 596-597 [discussing the two-tiered standard of review in the context of a motion to suppress evidence].)

Our determination of whether the facts found amount to cruel and unusual punishment is governed by *Rhodes v. Chapman* (1981) 452 U.S. 337, in which the Supreme Court considered for the first time whether conditions of confinement at a particular prison constituted cruel and unusual punishment in violation of the Eighth Amendment. Articulating the principles relevant to its analysis, the court explained that the Eighth Amendment prohibits conditions of confinement which " 'involve the unnecessary and wanton infliction of pain' [citation]. . . ." (*Id.*, at p. 346, fn. omitted.) "Among 'unnecessary and wanton' inflictions of pain

are those that are 'totally without penological justification.' [Citations.]" (*Ibid.*)

The court emphasized that there is no static test for ascertaining whether conditions of confinement are cruel and unusual. Rather, "the Eighth Amendment 'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.' [Citation.]" (*Rhodes v. Chapman, supra*, 452 U.S. at p. 346.) Conditions of confinement, "alone or in combination, may deprive inmates of the minimal civilized measure of life's necessities. Such conditions could be cruel and unusual under the contemporary standard of decency. . . . But conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional. To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society." (*Id.*, at p. 347.)

The court cautioned that Eighth Amendment determinations should not be merely the subjective views of judges. (*Rhodes v. Chapman, supra*, 452 U.S. at p. 346.) "In assessing claims that conditions of confinement are cruel and unusual, courts must bear in mind that their inquiries 'spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility.' [Citation.]" (*Id.*, at p. 351.)

The specific question in *Rhodes* was whether the double celling of inmates at an Ohio prison was unconstitutional. According to the trial court's findings, each 63-square-foot cell contained a two-tiered bunk bed, a cabinet night stand, a wall-mounted sink with hot and cold running water, and a toilet, a cabinet, shelf, and built-in radio. About 75 percent of the inmates could choose to spend most of their time outside the cells, in the day rooms, school, workshops, library, or in visits. Other inmates spent more time in their cells. The food was adequate, as was the air ventilation system and the temperature. While violence had increased with the prison population, evidence failed to establish that it had increased out of proportion to the increase in population, or that double celling itself caused greater violence.

The trial court had concluded that double celling under those circumstances constituted cruel and unusual punishment, but the Supreme Court disagreed. It reasoned that the double celling did not "lead to deprivations of essential food, medical care, or sanitation. Nor did it increase violence among inmates or create other conditions intolerable for prison confinement." (*Rhodes v. Chapman, supra*, 452 U.S. at p. 348.) The court acknowledged that the double celling was not desirable and might even inflict pain, but stated, "there is no evidence that double celling under these circumstances either inflicts unnecessary or wanton pain or is grossly disproportionate to the severity of crimes warranting imprisonment." (*Id.*, at pp. 348-349, fn. omitted.)

Our review must also be guided by *Whitley v. Albers* (1986) 475 U.S. 312, decided by the Supreme Court while the instant appeals were pending. In *Whitley*, the Supreme Court discussed the requirements of the Eighth Amendment in the context of a prisoner's claim that officials subjected him to cruel and unusual punishment by shooting him during an attempt to quell a prison riot. Relying on *Estelle v. Gamble* (1976) 429 U.S. 97, in which it had held that deliberate indifference to serious medical needs of prisoners is cruel and unusual punishment, the court stated that an intent to inflict unnecessary pain is not required to establish an Eighth Amendment violation. Nevertheless, it also stressed that to be cruel and unusual punishment, conduct which does not purport to be punishment at all must involve more than ordinary lack of due care for a prisoner's interests or safety. (*Whitley v. Albers, supra*, 475 U.S. at p. 319.) "*It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause, whether that conduct occurs in connection with establishing conditions of confinement*, supplying medicial needs, or restoring official control over a tumultuous cellblock." (*Ibid.*, emphasis added.)

Whether the trial court correctly assessed the constitutionality of conditions at San Quentin is not the only question in this case. Even if we were to agree with that assessment, we must also evaluate the remedies it ordered. When a court has concluded that an Eighth Amendment violation has occurred, its function is

"to [fashion] a remedy that does no more and no less than correct that particular constitutional violation." (*Hoptowit v. Ray* (9th Cir. 1982) 682 F.2d 1237, 1246; see also *Spain v. Procunier* (9th Cir. 1979) 600 F.2d 189, 194; *Ruiz v. Estelle* (5th Cir. 1982) 679 F.2d 1115, 1144-1145, mod. on other grounds 688 F.2d 266.) A remedial injunction which goes beyond what is required to correct the Eighth Amendment violations must be reversed. (*Union County Jail Inmates v. Di Buono* (3d Cir. 1983) 713 F.2d 985, 1001-1003; *Hoptowit v. Ray, supra,* 682 F.2d at pp. 1244-1245.) This limitation on the court's discretion is based in part on the recognition that "the problems of prisons in America are complex and intractable, and . . . not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of those reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform." (*Procunier v. Martinez* (1974) 416 U.S. 396, 404-405, fn. omitted; see also *Wilson v. Superior Court* (1987) 194 Cal.App.3d 1259, 1268-1269.)[4]

OVERCROWDING

a. Double celling

Initially the court prohibited involuntary double celling; later, it barred voluntary double celling as well. Before we consider defendants' objections to this ban, it is necessary to clarify what is not at issue in this appeal and to determine precisely what the trial court held with respect to double celling.

In its statement of decision the trial court made detailed findings of fact about four categories of conditions of confinement: double celling, "other conditions of cell confinement," violence, and food service. As to the "other conditions" category, which included such deficiencies as inadequate heat and ventilation,

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[4] When a federal court reviews conditions in a state prison, that court's discretion in fashioning a remedy is also limited by principles of federalism. (*Hoptowit v. Ray, supra,* 682 F.2d at p. 1246.)

deteriorated plumbing, and an electrical system violating code requirements, the court concluded that these conditions did not meet "the most minimum standard required for reasonably adequate shelter." In other words, the court held that those conditions combined to deprive prisioners of their need for habitable shelter and in combination amounted to a violation of the Eighth Amendment. (See *Toussaint v. McCarthy, supra*, 801 F.2d at p. 1107.) The court also concluded that conditions existing in the food service area threatened the physical health of the inmates and fell "below contemporary standards of decency." Defendants do not dispute the sufficiency of the evidence to support the court's findings concerning either of these two categories; they have not attacked the judgment insofar as it concluded that these deficiencies violated the Eighth Amendment and ordered their correction.

The trial court also concluded that the rate of violence at the prison was constitutionally unacceptable. As will be discussed, defendants do dispute the court's findings and conclusions on that category.

The court's findings and conclusions about double celling are somewhat ambiguous. From the court's treatment of double celling as a discrete category of conditions of confinement, it appears to have held double celling unconstitutional regardless of any other conditions of cell confinement. The court also mentioned double celling in its findings about the escalating rate of violence at the prison, stating that two of its many causes were the double celling generated by overcrowding and the classification system which placed the most dangerous inmates at San Quentin. Thus it appears that the court also prohibited double celling based on its finding that the practice contributed to the unconstitutional rate of violence at the prison.

"[I]n and of itself double-celling is not unconstitutional." (*Toussaint v. Yockey, supra*, 722 F.2d at p. 1492, citing *Rhodes v. Chapman, supra*, 452 U.S. 337.) Considered in isolation, double celling may be undesirable, harsh, and restrictive, but it does not inflict unnecessary and wanton pain or violate contemporary standards of decency. Insofar as the trial court held that double celling was per se unconstitutional, the court erred.

In *Rhodes*, the Supreme Court intimated that double celling may be prohibited by the Eighth Amendment if it increases violence among inmates. (*Rhodes, supra*, 452 U.S. at p. 348.) Unquestionably prison officials are obligated to take reasonable steps to protect inmates from physical abuse. (*Hoptowit v. Ray, supra*, 682 F.2d at p. 1250.) Although "[v]iolence is unfortunately epidemic to American prisons" (*Murphy v. United States* (D.C. Cir. 1981) 653 F.2d 637, 342), "[v]iolence and sexual assault among inmates may rise to a level rendering conditions cruel and unusual." (*Alberti v. Klevenhagen* (5th Cir. 1986) 790 F.2d 1220, 1224.) Accordingly, we must also examine the sufficiency of the evidence to support the court's finding that double celling was among the causes of increased violence at San Quentin.

The evidence does indicate that in 1982, the number of assaults, suicides, and weapon possession incidents per 100 average daily population at the prison was increasing, and that the rate of increase was greater at San Quentin than at Folsom, the other Level IV institution. That evidence, however, does not support the finding that double celling itself was a cause of the increase. The statistics upon which the court relied did not distinguish between the mainline population and the segregated units, or between single and double celled inmates. As defendants point out, an increase in violence as a whole does not establish that double celling among the general population caused that increase. Accordingly, the court's prohibition on double celling based on its causal relationship to the rate of violence at the prison cannot be sustained. In light of our conclusion, the court's ban on voluntary double celling must also fall.

b. Monitoring of transferred inmates

The second component which the court ordered included in defendants' plan to eliminate overcrowding was a section addressing "the effect on the physical, mental and emotional well-being" of members of the class resulting from their confinement in institutions other than San Quentin. The court's order on defendants' final plan requires monitoring of conditions of confinement of any class member transferred to another prison within the system. Defendants object to this order.

The monitoring requirement apparently stemmed from the court's concern that its ban on double celling at San Quentin would result in overcrowded conditions at other state prisons. Our conclusion that the prohibition on double celling must be reversed would seem to eliminate the reason for the monitoring requirement.

The monitoring order must also be reversed for a more fundamental reason. Although a trial court has broad discretion in tailoring a remedial injunction (see *Times-Mirror Co. v. Superior Court* (1935) 3 Cal.2d 309, 331), that discretion is not unlimited, particularly in a case such as this. As already stated, a court which concludes that a condition of confinement violates the Eighth Amendment should "[fashion] a remedy that does no more and no less then correct that particular constitutional violation." (*Hoptowit v. Ray, supra,* 682 F.2d at p. 1246.)

This action was brought on behalf of persons confined at San Quentin or who might be confined there in the future, and challenged conditions of confinement at that institution, not in the state's prison system as a whole. The court's function was limited to devising a remedy for those conditions at San Quentin which it found unconstitutional. Conditions at other state prisons were not litigated in this action. These conditions are being litigated in other courts. Plaintiffs do not explain how the monitoring of inmates transferred from San Quentin would rectify conditions at that prison, and cite no authority which supports this intrusive aspect of the court's remedial orders. The court abused its discretion in mandating the monitoring of transferred prisoners.[5]

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[5] *Rowland v. U.S. Dist. Court for N.D. of Cal., supra,* 849 F.2d 380 is consistent with our conclusion. *Rowland* is the most recent appeal in the lawsuit brought on behalf of prisoners confined in administrative segregation in four California prisons. (See *ante,* p. 2, fn. 1.) A permanent injunction, limited to Folsom and San Quentin, was issued by the trial court to correct several unconstitutional conditions. A monitor was appointed to review compliance with the injunction, and was ordered by the trial court to investiage the transfer of Folsom prisoners to another prison and evaluate the constitutionality of conditions at that prison. The appellate court reversed, reasoning that the trial court had no jurisdiction to send an emissary into a facility not covered by the injunction to

c. Alternatives to transferring inmates

The potential impact on other prisons of the San Quentin double-celling underlies another order of the court challenged by defendants. After reviewing defendants' proposed plan, the court ordered that their final plan should contain solutions to the overcrowding problem other than transferring prisoners to crowded prisons elsewhere in the system; it listed several such solutions, among them proposals for legislation to create a "safety valve" release program. In its order evaluating the final plan, the court stated that defendants had not "carried their burden" in seeking the enactment of legislation and that the plan ignored many alternative solutions to overcrowding. The order stated that the court could not accept defendants' policy choice to overcrowd other institutions; it required defendants to report at a later date their efforts to alleviate overcrowding through adoption of approaches other than the transfer of inmates.

As with the monitoring requirement, this order must be reversed for more than one reason. First, the reversal of the double-celling ban removes one of the reasons underlying this order. More importantly, "[c]ourts must recognize that the authority to make policy choices concerning prisons is not a proper judicial function." (*Hoptowit v. Ray, supra*, 682 F.2d at p. 1246.) As already stated, conditions of confinement elsewhere in the prison system were not challenged in this lawsuit, and the court made no findings with respect to the constitutionality of conditions in other prisons. Under these circumstances, the court abused its discretion by dictating that defendants had to alleviate overcrowding by methods other than transferring of inmates. Furthermore, the doctrine of separation of powers prohibits courts from compelling legislative action. (*California State Employees' Assn. v. State of California* (1973) 32 Cal.App.3d 103, 108-109.) By ordering defendants to seek the passage of "safety valve" legislation, the court impermissibly attempted to accomplish indirectly what it could not order directly.

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determine the existence of constitutional violations there. "If such violations exist, they must be established on the basis of a new lawsuit brought by allegedly aggrieved parties." (*Rowland, supra*, at p. 382.)

d. Transfers to Soledad

On June 19, 1985, the court enjoined defendants from involuntarily transferring mainline prisoners to the North and Central facilities of the Correctional Training Facility at Soledad. The order provided that it would dissolve if conditions of confinement at those facilities were found to meet constitutional standards in two separate actions then pending. We take judicial notice of two unpublished opinions in those actions, *In re Rock* (Nov. 14, 1986) H000890 and *In re Daily and Smith* (Mar. 16, 1987) A026682, in which the reviewing courts reversed trial court orders concluding that conditions at those facilities were unconstitutional or ordering changes in the prison operation. In light of those decisions, the parties now agree that defendants' appeal from this order is moot.

INMATE CLASSIFICATION SYSTEM

Among the conditions upon which the court stayed its judgment was the submission of a plan for the evaluation and reexamination of the classification system by which San Quentin was designated a Level IV institution. Defendants' Phase I Report included a proposal for a comprehensive review of the classification system. The court's order in response to that report specified several questions which should be addressed, including the extent to which the classification system had contributed to violence at San Quentin and whether the system should be modified.

In April 1984, defendants submitted their Phase II Report and a study titled "Preliminary Report, Review and Analysis of Departmental Inmate Classification System." According to its introduction, the latter report had its origin in the trial court's directive in the instant case, but correctional administrators, legislators, and others involved concluded that a more extensive evaluation and modification of the overall classification system was necessary. This preliminary report explained that a long-term evaluation of the system would follow. Nevertheless, in its September 24, 1984, order, the trial court directed defendants to carry out "a total analysis of the existing classification system." It

ordered defendants to consult outside experts and include specified components in the analysis.

The Department's evaluation culminated in its Inmate Classification System Study: Final Report, January 1986, which was filed with the trial court. In his 7th Quarterly Report to the trial court, the Special Master expressed some criticism of the study, but concluded that defendants had met the mandates of the court in performing the study and recommended that they be found in compliance with the final plan. (Special Master's 7th Quarterly Report at p. 13.) In an order dated October 17, 1986, the trial court accepted the Special Master's Report. [6]

Defendants contend that the court erred in requiring an evaluation of the classification system. In general, courts defer to the expertise of prison officials in classifying inmates, and will not limit their discretion to classify prisoners as they deem appropriate. (See, e.g., *Groseclose v. Dutton* (D.Tenn. 1985) 609 F.Supp. 1432, 1436, 1446-1447, vacated on other grounds and remanded 829 F.2d 581, 585.) Nevertheless, a court may order the development of a classification system as part of the remedy when prison officials have not controlled or isolated prisoners who threaten the safety of others and the level of violence is so high that it constitutes cruel and unusual punishment. (See *Jones v. Diamond* (5th Cir. 1981) 636 F.2d 1364, 1374, 1376.)

In this case, however, we will not decide whether the court erred in ordering a study of the classification system. The duty of a reviewing court is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions. An issue in an appeal may be moot when an event has occurred which makes it impossible for the court to grant the appellant any effectual relief should it rule in his or her favor. (See *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 132.) Given the Department's study, the Special Master's Report and the court's acceptance of that report, any issues concerning the classification system are moot.

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[6] We have taken judicial notice of the study, the Special Master's report, and the order accepting that report.

Defendants contend that a live controversy exists as to the validity of the court's factual findings about the effects of the existing classification system. Regardless of those findings, however, defendants have prepared the study, the Special Master has concluded that defendants have met the mandates of the court in performing that study, and the court has accepted the Special Master's Report. In plaintiffs' words, "With respect to the orders requiring examination and reevaluation of the classification system, there is nothing left to do. [Defendants] have complied. [Defendants] so contend; the special master agreed; the trial court so found. The studies cannot be un-written." Any decision by this court about whether the court should have ordered the study would have no practical effect or provide defendants with any effective relief.

In the alternative, defendants also urge that we should evaluate the court's classification orders even if events have rendered those orders moot, because the question is one of substantial public interest which is likely to recur. (See *Marin County Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 929.) Undoubtedly the state's prison system and the manner in which prisons and inmates are classified is of considerable public interest. Nevertheless, in any case challenging the constitutionality of conditions of confinement, the validity of an order involving classification will depend on the facts and circumstances of that particular case. (See, e.g., *Gates v. Collier* (5th Cir. 1974) 501 F.2d 1291, 1308-1310; *Palmigiano v. Garrahy* (D.R.I. 1977) 443 F.Supp. 956, 965-968, 987-988.) We are unaware of any other similar pending case, and have not been convinced by defendants that the precise questions raised by the court's orders in this case are likely to arise again.

OTHER ORDERS

Defendants also object to several other aspects of the court's post-judgment orders.

a. Compliance with health and fire surveys

Defendants have not challenged the court's findings about the many serious structural and operational deficiencies at San Quen-

tin or its conclusion that these deficiencies combined to deprive inmates of habitable shelter and personal safety according to contemporary standards of decency. Nor have they challenged that portion of the injunction directing development of a plan for the expeditious elimination of "the structural and operational deficiencies at San Quentin which threaten the lives, health and safety of the inmates. . . ."

In its January 1984 order on the proposed plan, the court stated that it was impressed with the progress made by defendants in correcting these deficiencies, and approved their schedule to improve the situation, subject to several conditions. Among those conditions was that the deficiencies to be monitored should include not only those set forth in the court's declaratory judgment, "but also those set forth in the most recent Environmental Health Survey conducted by the Environmental Health Division, Department of Health Services, as well as the Fire Inspection Report made by the State Fire Marshal as these reports apply to structure, services, and programs covered by this Court's decision."

Defendants object to that condition, arguing that compliance with health and fire surveys is desirable but that such reports do not set constitutional standards. We agree. Opinions of experts as to desirable prison conditions do not establish constitutional minima. (*Rhodes v. Chapman, supra*, 452 U.S. at p. 348, fn. 13.) While fire safety and environmental health are legitimate concerns under the Eighth Amendment, " 'not every deviation from ideally safe conditions constitutes a violation of the constitution.' " (*French v. Owens* (7th Cir. 1985) 777 F.2d 1250, 1257.) To the extent that the trial court's order may be read as compelling defendants to remedy all defects in every health survey and fire inspection report, present and future, that order goes too far. Nevertheless, the trial court is entitled to consider those reports in determining whether conditions at the prison currently satisfy contemporary standards of decency.

b. Inmate out-of-cell activities; staff training

In that January 1984 order, the court also conditioned its approval of the proposal to eliminate structural and operational

deficiencies on the inclusion in the final plan of sections addressing inmate out-of-cell activities and staff training. Defendants object to this condition as well.

Read as a request for information rather than a directive to implement specific programs, the requirement that the plan report on out-of-cell activities was not improper. The structural and operational deficiencies being remedied included inadequate heat, lighting, plumbing, and ventilation in cells; assessment of the adequacy of any improvements would not be complete without information about whether, when, and for how long inmates may be out of those cells. Likewise, the directive regarding staff training was not an abuse of the court's discretion. It merely directed the defendants to address staff training in working toward compliance with the court's order. This was done in the operations and structures section of defendant's plan which was subsequently approved by the court. If the court had ordered the specific type of training required we would have a different question. Proper training for guards is unquestionably desirable, but the nature of that training is not a determinative issue in respect to a violation of the Eighth Amendment. "[T]o require prisons to have adequate . . . training programs [for staff] is an impermissible judicial involvement with the minutiae of prison administration. [Citation.]" (*Hoptowit v. Ray, supra,* 682 F.2d at p. 1251.)

c. Order on the final plan

In its September 1984 order, the court directed defendants to "carry out their final plan." Defendants express concern that compliance with that plan may become the measure of the trial court's continuing jurisdiction over the prison, and ask this court to modify the order to require them to carry out the plan only as long as conditions at the prison remain unconstitutional.

However, our disposition of this appeal has significantly reduced the scope of that order. The final plan discussed defendants' proposals to eliminate, ameliorate, or correct each condition cited by the court as unconstitutional. It addressed four general topics: overcrowding, the inmate classification system, operational deficiencies, and structural deficiencies. We have already ex-

plained why the court's orders directed at overcrowding, such as its ban on double celling and its requirement for monitoring of transferred prisoners, must be reversed. Thus to the extent that the September 1984 order directs defendants to carry out that portion of their final plan for the elimination of overcrowding, it too must be reversed.

In addition, we have concluded that any issues with respect to the inmate classification system are moot because defendants have complied with the court's orders for an evaluation of that system; therefore the order to carry out the final plan does not encompass any classification issues.

What remains of the September 14 order, then, is that defendants are to carry out their final plan for the elimination of the structural and operational deficiencies at the prison. We reiterate that defendants have not appealed from the court's judgment and orders with respect to those deficiencies. If conditions have changed, defendants are entitled to apply to the trial court for a modification of the injunction. The question then will be whether the changed conditions satisfy constitutional requirements, not whether defendants have complied with all requirements of their plan. (See *Toussaint v. Yockey, supra*, 722 F.2d at p. 1492, fn. 3; *Cody v. Hillard* (8th Cir. 1986) 799 F.2d 447, 451, affd. in part, revd. in part 830 F.2d 912; see also *Welsch v. Goswick* (1982) 130 Cal.App.3d 398, 404.)

Finally, in light of our conclusions with respect to defendants' contentions, it is unnecessary to consider their alternative contention that the trial court had no jurisdiction to modify the injunction once notice of appeal from that injunction had been filed.

DISPOSITION

The declaratory judgment and injunction and the orders appealed from are reversed insofar as they: (1) hold double celling unconstitutional; (2) prohibit involuntary or voluntary double celling; (3) require the monitoring of transferred inmates; (4) mandate defendants to seek the enactment of legislation and consider methods other than transferring prisoners to alleviate overcrowding. The appeal from the order of June 19, 1985, which the parties agreed is moot, is dismissed. In all other respects, the judgment and orders are affirmed. Plaintiffs and defendants shall bear their own costs on appeal.

_____

Merrill, J.

We concur:

_____

White, P.J.

_____

Barry-Deal, J.

APPENDIX D

Court of Appeal of the State of California
In and for the
First Appellate District

Division: 3

[Filed January 6, 1989]

Wilson, Don D., et al.

vs.

Deukmejian, George, et al.

A026277 Old No. A022431
Marin County No. 103454

BY THE COURT:

The petition for rehearing is denied.

Dated: January 6, 1989

P.J.

APPENDIX E

Order Denying Review

After Judgment by the Court of Appeal

1st District, Division 3, No. A026277

S008560

In the Supreme Court of the State of California

In Bank

Don C. Wilson et al., Respondents,

v.

George Deukmejian et al., Appellants.

Filed March 23, 1989
Robert Wandruff Clerk

Respondents' petition for review DENIED.

The request for an order directing publication of the opinion in the above-entitled cause is DENIED.

/s/ [Malcolm] Lucas
Chief Justice